OVERSIGHT OF REGULATORY FLEXIBILITY ACT
(Part 1)

HEARINGS

BEFORE THE

SUBCOMMITTEE ON
EXPORT OPPORTUNITIES AND SPECIAL SMALL
BUSINESS PROBLEMS

OF THE

COMMITTEE ON SMALL BUSINESS
HOUSE OF REPRESENTATIVES

NINETY-SEVENTH CONGRESS

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OVERSIGHT OF REGULATORY FLEXIBILITY ACT
(Part 1)

WEDNESDAY, OCTOBER 7, 1981

House of Representatives,
Subcommittee on Export Opportunities and
Special Small Business Problems,
Committee on Small Business,
Washington, D.C.

The subcommittee met, pursuant to notice, at 9 a.m., in room 2359-A, Rayburn House Office Building, Hon. Andy Ireland (chairman of the subcommittee) presiding.

OPENING STATEMENT OF CHAIRMAN IRELAND

Mr. **Ireland**. Good morning, everybody.

Today we deliver on our commitment to the small business community on oversight of the Regulatory Flexibility Act.

The design of the regulatory process goes right to the heart of the relationship between the Government and the people. It is the most tangible contact many people have with their Government.

Every aspect of our lives is affected in some way by Government regulation: the air we breathe, the food we eat, our daily transactions in the marketplace, our safety as we drive our cars or work at our jobs.

Government intervention in the economy is today much more the rule than the exception.

The overregulation of small business is not just a parochial problem; it is a public problem as well. This public interest lies directly in two areas:

One, the disproportionate impact of Government regulation on small business reduces the competitive capacity of small business; thereby placing Government in the strange position of encouraging economic concentration; and,

Two, consumers, to a large extent, must pay the costs of regulation in the form of higher prices.

Thus, while the most immediate and visible impact may fall to the small entrepreneur, the public shares the burden.

While the Regulatory Flexibility Act has been accurately called major legislation for small business entities, it does not really drastically alter the regulatory process as some people have complained.

Nor does it, in my opinion, place an undue burden on regulatory agencies. We worked 3 years on the drafting of the act. It is by no means a perfect piece of legislation.

We will now hold exhaustive oversight hearings to not only assure Agency compliance but also to highlight any weaknesses in the act and also to seek out any reasonable amendments that may be needed.

The problem we have attempted to address is a very serious one. We approached the task in a serious manner. We will approach this phase of our activity—oversight—in the same serious vein.

By no means are we on a witch hunt looking for bureaucrats who are ignoring the act or who are consciously putting all their efforts into trying to subvert the act—but the Lord help those we find.

We are pleased to have both the Small Business Administrator and Chief Counsel for Advocacy here this morning to discuss implementation of the Regulatory Flexibility Act.

We will continue our hearings on October 20, 21, and 22. At that time we will review the regulatory flexibility performance of nine agencies.

Without further explanation, we will proceed. We will call on the Administrator, Mr. Cardenas.

TESTIMONY OF MICHAEL CARDENAS, ADMINISTRATOR, SMALL BUSINESS ADMINISTRATION; ACCOMPANIED BY MARTIN TECKLER, REGULATORY FLEXIBILITY OFFICER, SBA

Mr. **Cardenas**. Thank you, Mr. Chairman.

I am pleased to appear before you this morning to discuss the Small Business Administration's compliance with the requirements of the Regulatory Flexibility Act. As you know, Mr. Chairman, that act provides for specific oversight functions to be carried out by the SBA's Chief Counsel for Advocacy. Mr. Swain is here this morning to discuss his office's efforts to meet those responsibilities. I would like to take this opportunity to say that I fully support him in those efforts, and I have directed all of SBA's personnel to cooperate with his office in seeing to it that those responsibilities and the goals of the Regulatory Flexibility Act are met.

I believe that the thrust of the Regulatory Flexibility Act is fully commensurate with the aims of the Reagan administration in the area of "regulatory reform." I intend to see to it that SBA is in full compliance with the requirements of the act as well as other laws, regulations and executive orders which are designed to ease the burden of Federal regulation, particularly on small businesses.

In this respect, as you know, the Regulatory Flexibility Act is designed to significantly decrease the burden of regulations on small entities by requiring that:

First, for each rule for which it publishes a general notice of proposed rulemaking, after January 1, 1981, an agency must prepare and make available for public comment an initial regulatory flexibility analysis.

The analysis is to be published at the time of the publication of the general notice of proposed rulemaking in the Federal Register.

It must contain:

A rationale for the agency's action;

The objective and legal basis for the proposed rule;

An estimate of the number of small entities it will affect and what types;

A detailed estimate and description of the reporting, recordkeeping, and compliance requirements anticipated;

An identification of relevant Federal rules which may conflict with, duplicate, or overlap the proposed rule; and,

Specific discussion of alternatives to the rule which could accomplish the same objectives, such as different standards for large and small entities, simplification, performance standards, or exemption of small entities.

Second, when the agency promulgates a final rule, it must issue a final regulatory flexibility analysis. Generally, the final analysis is to include information on how the agency handled issues brought up in the initial analysis. It also must respond to public comments. A rule is void after 180 days without a final analysis.

Third, an agency is not required to prepare an analysis if it certifies that the proposed rule will not exert a significant economic impact on a substantial number of small entities. A copy of the certification must be sent to SBA's Chief Counsel for Advocacy for comment. Taken as a whole, these requirements place an affirmative burden on Federal regulators to see to it that their regulations take into account the impact they will have on small business, and are the least burdensome to small entities as possible.

In addition, the act requires that:

First, agencies review systematically within 10 years all of their existing and outstanding rules with respect to small entities. In reviewing a rule, an agency must take into consideration the continued need for the rule, public complaints regarding the rule, its complexity and the extent to which it overlaps, duplicates, or conflicts with other Federal or State rules.

Second, in addition, each agency must publish annually in the Federal Register a list of the rules it intends to review during the next year.

Third, and finally, each agency is required to publish in the Federal Register a 10-year plan for a review of its rules which affect small entities.

In this way the act will compel agencies to review regulations which they have on the books, eliminate those which are not needed, and provide the public with an ample opportunity to participate in the revision of the rules which affect it. This again is totally in keeping with the objective of this administration to see to it that Federal regulations are kept at the minimum level necessary to accomplish legislative mandates.

SBA, under my administration, has done its best to adhere to the requirements of the Regulatory Flexibility Act with respect to its own regulations. In this regard we have not encountered any major problems either in implementing the law or with specific language requirements of the act. We have carefully reviewed all of our regulations which have been published since January 1, 1981. We have either prepared an initial regulatory flexibility analysis or certified that they would not have a significant economic impact upon a substantial number of small businesses. We have held seminars in conjunction with the Office of Advocacy to educate our own people on how to write better regulations which fully comply with the act. We have published in the Federal Register SBA's plan for implementing the review process required by the act. In October we will be publishing our first list of regulations to be reviewed under that plan. Finally, I have named a regulatory flexibility officer for SBA to oversee our efforts to comply with the Regulatory Flexibility Act and to see to it that those efforts result in total compliance. That individual happens to be sitting to my right. His name is Martin Teckler.

The Regulatory Flexibility Act is of special importance to the SBA because our Chief Counsel for Advocacy has been assigned the role of monitoring the performance of all Federal agencies under the act. You will hear directly from the Chief Counsel on Advocacy's work in that role. Inasmuch as reg flex is a priority activity for the Office of Advocacy, it is also a priority and challenge for SBA. Advocacy is meeting the challenge of reg flex with a vigorous program of monitoring regulations, screening them, classifying them according to burden, establishing a dialog with each agency over regulations it has promulgated and attempting most importantly to influence these rules positively in favor of small business. Obviously, because the Chief Counsel's role is one of oversight for all agencies that promulgate rules subject to notice and comment, we function somewhat independently in this area. But you can be assured that regarding routine matters of administrative support and resource allocation, the SBA as Advocacy's parent agency, has few higher priorities than the wholehearted support of the reg flex monitoring effort, as well as carrying out other required duties under the act.

In closing, let me say that we at SBA take the responsibilities mandated to us by the Regulatory Flexibility Act very seriously, and we will be working hard to see to it that we play a major role both in enforcement of the act through our Office of Chief Counsel for Advocacy and in complying with it as a participating agency. We look forward to cooperating with you in your oversight of the act and in seeing to it that its intent is fully carried out.

That concludes my remarks. Mr. Martin Teckler is here should you have any questions. I will answer questions also.

Thank you.

Mr. **Ireland**. Thank you.

I think we are off to a good start based on your testimony and comments. I am pleased to hear that.

Mr. Teckler, perhaps we could have you comment, if you would, on whether many of your regulations will or will not qualify for the Regulatory Flexibility Act.

Mr. **Teckler**. We have made the decision that all of our regulations will be considered pursuant to the terms of the act, and we will do a certification if we feel that the particular regulation may not have a significant economic impact on a substantial number of small entities or we will do an initial regulatory flexibility analysis and final regulatory flexibility analysis if we feel that the particular regulation will have that type of impact.

So, we will make a conscious effort to have all of our regulations considered under the Regulatory Flexibility Act.

Mr. **Ireland**. I am sure we probably all would agree that the setting of a good example is vitally important at this time. What about legislation that you are aware of and that we have become aware of in the other body that would remove some of this administration from the SBA and move it to OMB?

Will you be fighting vigorously to keep it within the SBA?

Mr. **Cardenas**. I would say fervently, Mr. Chairman, that I would be against anything or be opposed to anything that would weaken the function of the Office of Advocacy. I consider reg flex as an important function of that office.

Mr. **Ireland**. I think you share with us--the whole committee not just this subcommittee—the importance of the act.

One of the cornerstones of the Regulatory Flexibility Act is the definition of what a small entity is. As we know, some agencies have different ideas as to what a small business is. In addition to that, there have been efforts to change the criteria and the definitions. Bring us up to date on that.

Mr. **Cardenas**. As you know, we have undergone a study for the last 2 years in terms of size standards. Currently some revisions to those size standards are being reviewed at our office. We are hopeful that they will go to Federal publication, that is, to the Federal Register, very soon.

Of course, then we will be open for public comment. It has taken time. I realize this has been a ticklish program. I thought it would be simpler, but I found it to be controversial and certainly a very, very important issue.

Since that time, we have met with many people and groups from different industries. We have confirmed that it is a vital and important issue.

But I assure you that we should be getting to the Federal Register very soon.

Mr. **Ireland**. I take it that this is not a wholesale review, but it is a review of key areas and not the whole laundry list; right?

Mr. **Cardenas**. Actually, the whole gamut will be up for public comment.

Mr. **Ireland**. I see.

Mr. **Cardenas**. We have come up with 800 categories to establish different size standards. Certainly even upon the establishment or concurrence of definite size standards, we would never be so insensitive that they would not be changeable in the future. Things change, and we have to look at all the economic factors.

But, it is a very difficult decision.

Mr. **Ireland**. There is no question about it. It's a good way to stir up a storm.

Mr. Weber?

Mr. **Weber** of Ohio. Is your position a full-time position in the sense that your duties as regulatory flexibility officer encompass all of your working time?

Mr. **Teckler**. I am the Assistant General Counsel for Legislation and Regulations.

In that capacity the regulatory flexibility duties come to my attention.

Mr. **Weber** of Ohio. As one of your duties?

Mr. **Teckler**. Yes.

Mr. **Weber** of Ohio. How many other people at the SBA would be helping you administer your duties as regulatory flexibility officer?

Mr. **Teckler**. I have two staff attorneys under my direct supervision who assist me directly, but the Regulatory Flexibility Act contemplates involvement of all Agency personnel who are involved in revising regulations.

To that end we have held seminars within the Agency, which Mr. Cardenas mentioned in his prepared statement, to prepare people on how to draft regulations which comply with the Regulatory Flexibility Act.

If our efforts in that regard are successful, the staff people will be of tremendous assistance in providing us with the type of regulations and supporting materials which will comply with the act and make my job of reviewing their efforts to come up with legally competent regulations a lot easier.

Of course, this is a process that will take some time since this is a rather new piece of legislation. We are making that effort on a day-by-day basis now.

Mr. **Weber** of Ohio. Mr. Cardenas, have you given any thought to the possibility that the way in which you are handling the Regulatory Flexibility Act might serve as a model for other governmental agencies? Is that one of the purposes?

Mr. **Cardenas**. We are making every effort to make sure that we comply with everything in the act. Yes, I would very much hope that we could be a model.

Mr. **Weber** of Ohio. Is there any kind of dialog going on with other agencies? How does this fit in with Vice President Bush's Regulatory Reform Task Force?

Mr. **Cardenas**. Our Chief Counsel for Advocacy and his staff are playing a vital role in that task force. They are working very closely with the Vice President, and have been assigned 25 specific regulations to review. They are working together very closely to try to eliminate too much overlap. It is a team effort.

Mr. **Weber** of Ohio. Has there been any reaction from the small business community to this act and to the way it is being handled?

Mr. **Teckler**. There has been a tremendous amount of reaction to the individual regulations because of the Regulatory Flexibility Act implications.

We have received comments that dovetailed perfectly on all our regulations with the categories prescribed in the Regulatory Flexibility Act for analysis. So, to that extent it focuses attention on the small business aspects of regulation. It is very important as an instrument in the whole executive branch for reviewing regulations with respect to their impact on small businesses.

Mr. **Cardenas**. I might add this. In my travels I always emphasize this act and the function of our office of the Chief Counsel for Advocacy. Surprisingly in many areas, even among the professional groups, people are not yet aware of this function. There is a lot of note taking every time I make this comment.

This indicates there is a real interest out there. The more we can get that message out to the small business community through publications or through communications which we are working on now, I think it will serve a great purpose to the small business community.

Mr. **Weber** of Ohio. Do you have any estimate as to what the additional cost to your agency is for complying with this act and carrying out the mandates and that sort of thing?

Mr. **Cardenas**. It should not be much heavier than what we are staffed up to do now. I do not think the burden on us will be that significant.

Mr. **Weber** of Ohio. Thank you.

Thank you, Mr. Chairman.

Mr. **Ireland**. Thank you, Mr. Weber.

Concerning size standards, I know that SBA has a data base that they have been trying to build up. Other agencies want their own data base.

Could you give us the status of your data base? There are a lot of small businessmen who would like to have it in place.

Mr. **Cardenas**. Yes; that has been an important topic within our Agency. Although we have not completed our overall data base program; which is scheduled for completion in a year or so. We do have significant information which is meaningful enough to assist us in the Regulatory Flexibility Act.

We are assisting many agencies. We get calls on a daily basis for information on which we are able to help. There have been 20 agencies that have requested information that we have supplied with actual printouts. This involves assistance in helping them with regard to sales, size categories, employment, assets and profits, and that sort of thing.

Although we have not completed our overall data base program, we have been able to assist the agencies, not only with printouts, but verbally on a regular basis. I think we have helped them sufficiently to accomplish our goals at this time.

Mr. **Ireland**. That is encouraging.

Mr. **Cardenas**. Let me interrupt, Mr. Chairman.

I am not totally content overall, but I think we have been able to move in the proper direction.

Mr. **Ireland**. That in itself is something to be commended. I do not think that was taking place so, that is good information to have.

As for the periodic review that the SBA has put forward in compliance with the act, what has been the response to that? I am talking about in terms of SBA's review of its own regulations over a 10-year period and the public response as well as the response within the Agency.

Mr. **Cardenas**. We feel that we should not be an exception and that we should review ourselves just like anyone else. We are committed to comply with the act in its entirety.

Mr. **Teckler**. Mr. Chairman, we have not received a great deal of direct response on our plan which we published in the Federal Register this summer. However, we have received a response with respect to particular regulations.

In our agenda in October, which is coming out in a short time, which is also required by the act, we will be identifying those regulations which will be under specific review in the upcoming year.

At that time the regulations which will be identified will be the most significant regulations within the Agency that will deal with our disaster programs, our business loan programs, our small business investment company programs, as well as several of our other programs.

We also have our size standard regulations coming out.

We anticipate that the response to that list will be impressive and that the interest in that list will be tremendous on the part of the small business community throughout the country inasmuch as it will indicate to the public what our intentions are in terms of reforming our own regulations.

Mr. **Ireland**. That is outstanding. The ones that you have talked about will be the important ones, and they will be meaningful.

Mr. **Teckler**. It is important that we consider our most significant regulations first. In that progress we will not only give ourselves a chance to reform our most significant regulations, but give the public the most opportunity for input on that information process.

Mr. **Ireland**. I am sure we all know that the natural human reaction to having 10 years to do something is to wait 9½ years and try to do it all in 6 months. I did that in college.

If there are no further questions, we appreciate your being here this morning. Again, I think we are off to a good start.

Mr. **Cardenas**. Thank you. It is our pleasure. It is good to see you again.

Mr. **Ireland**. We will now call Mr. Swain, Chief Counsel for Advocacy to tell us what everybody else in Government is doing.

We welcome you.

TESTIMONY OF FRANK S. SWAIN, CHIEF COUNSEL FOR ADVOCACY, SMALL BUSINESS ADMINISTRATION

Mr. **Swain**. Thank you, Mr. Chairman.

I was going to wear my blue suit this morning until I realized everyone from the Agency was, so I wanted to draw the proper distinction.

Mr. Chairman, I appreciate your interest. As I mentioned to the chairman briefly before the hearing, having been with Advocacy in my position just 2 months, I was, in fact, myself commissioning a review of our activities under the Regulatory Flexibility Act.

So, your request for this report is a very timely one and was of great assistance to me in basically auditing the efforts thus far of the office and making sure that we are proceeding from here on the proper path.

My prepared statement is very lengthy. It has a number of important points in it. I would like to submit the statement for the record and briefly go through it and outline the important points.

Mr. **Ireland**. Without objection, your prepared statement will be inserted in the record at this point.

[Mr. Swain's prepared statement with attachments follow:]

PREPARED STATEMENT OF FRANK S. SWAIN, CHIEF COUNSEL FOR ADVOCACY, SMALL BUSINESS ADMINISTRATION

MR. CHAIRMAN AND MEMBERS OF THIS SUBCOMMITTEE:

I. INTRODUCTION

It is my special privilege and honor to provide Advocacy's first testimony on implementing the Regulatory Flexibility Act (RFA), Public Law 96-354. This Subcommittee has worked diligently for several years to document the Federal regulatory difficulties of small business and legislate an approach to solving those problems. The result of those efforts, the Regulatory Flexibility Act, is a well reasoned approach, which I believe is resulting in some desirable change even at this early date.

No single Office of Advocacy responsibility exceeds that imposed by this landmark legislation. No other agency has as much incentive as Advocacy to make this law work effectively for small businesses and entities.

The Regulatory Flexibility Act represents a major addition to the Administrative Procedure Act. The law itself represents the culmination of efforts that stretch back over several years and embodies the congressional interest in addressing and correcting _de facto_ injustices, which the application of so-called "uniformity of applicability" had heaped steadily on small entities. In a word, the RFA's paramount purpose is to ensure that reason returns to the regulatory process.

Henceforth, the RFA proclaims, where regulation is necessary, the regulation must be tailored to the regulated entity's size and capacity to bear the regulatory burden. No longer may regulators falsely assume that all entities have an equal capacity to comply. No longer should the rulemaking process rest on the facile assumption that all potential subjects of Federal regulation are similarly affected or have adequate resources to respond equally to regulation. No longer may Federal agencies regulate smaller entities without systematically planning, limiting, explaining and ultimately justifying their regulatory action affecting smaller entities.

Today, my purpose is to report on the measures Advocacy has taken to implement P.L. 96-354. The Office of Advocacy has made substantial progress. My tenure in office is too brief for me to claim that all aspects of the Advocacy system reflect my inspiration or bear my complete personal endorsement. But I can assure you that they represent a good faith effort by the Advocacy staff, working under the unsteady conditions of a transition, to capture the full intent of Congress and promote the best interests of small businesses and entities.

Congress and this Committee in particular supported several laws during the last session that were of special importance to small business, including the Equal Access to Justice Act and patent reform legislation. I intend to devote most of my energy to consolidating and implementing these legislative gains, extracting the greatest practical benefits from them without sacrificing my other statutory responsibilities. All are important, but the RFA is of the greatest immediate concern to the Office of Advocacy. The Office of Advocacy may now utilize the administrative law process as a mechanism for constructive Federal regulatory change, reversing the trend of governmental intervention in the marketplace and, in the process, relieving small entities from unnecessary regulatory burdens.

The focus of the RFA is not regulation _per se_. There are occasions when regulation is appropriate. The RFA imposes a requirement of regulatory analysis, and the expectation is that Federal agencies' sensitivity to the needs and problems of small entities will increase, and different regulatory decisions will result. In monitoring the Act, the Office of Advocacy will be pragmatic. The instrument of regulatory analysis is basically a self help mechanism for the Federal regulator, making him think first before acting. making the rule-making process itself more open to those who are most directly affected by that process, and making sure that regulations more frequently reflect rather than dictate economic realities. The Office of Advocacy's attitude toward other agencies will be to encourage and inform that analytical process. We seek their enlightened cooperation, and Advocacy will anticipate a growing concern for small business among all agencies.

In the past, a few Federal agencies demonstrated that the concept of "tiering" can work. They also demonstrated that Federal agencies can regulate smaller entities effectively without abrogating statutory responsibilities. In the past, however. this practice was the exception. Under the Regulatory Flexibility Act, it must be the rule. Now, every agency must do what only a few did before.

The results thus far are mixed, but encouraging. As Chief Counsel for Advocacy, I am not entirely pleased with the response to the RFA so far. No Chief Counsel could be. Perhaps, none should ever be entirely satisfied as long as regulation is a major concern to small business growth and development.

There is already a marked improvement. Just how much of the overall improvement in the regulatory climate can be attributed to the RFA, I cannot say. Certainly, the recent moritorium on regulations, Executive Order 12291, and the activities of the Vice President's Task Force on Regulatory Relief explain some of the change. But, it does appear that P.L. 96-354 is well on its way toward becoming the "landmark" legislation that many believed it to be.

II. ADVOCACY'S IMPLEMENTATION OF THE RFA

A. The Regulatory Record

In order to address the issue of "regulatory flexibility" in 1981, one must look at the entire range of Federal regulatory behavior. All Federal regulatory actions do not fall under the RFA's coverage. The Office of Advocacy attempted to devise a system that ensures that virtually every relevant rule or proposed rule subject to the requirements of the RFA is subjected to Advocacy's analysis.

To develop some feel for the extent of this task, consider Tables I and II, which illustrate the overall volume of Federal regulation. As these tables show, there are different measures of the Federal regulatory burden, and the statistics show that the burden is very substantial. What these typical statistics do not show is the practical effect of these burdens on our Nation's businesses and small entities. Basically, these data illustrate the parameters of Advocacy's regulatory monitoring role under the RFA.

Examining these data more closely, one can focus on recent Federal regulatory developments. One quantitative measure of Federal regulatory output is the average number of proposed rules that are published in the *Federal Register*.

TABLE I. 1977-1981 Tabulation of Final and Proposed Rules Published in the Federal Register.

	1977				1978				1979				1980				1981			
	Final Rules		Proposed Rules		Final Rules		Proposed Rules		Final Rules		Proposed Rules		Final Rules		Proposed Rules		Final Rules		Proposed Rules	
	Total	Ave. Per Day*	Total	Ave. Per Day*	Total	Ave. Per Day*	Total	Ave. Per Day*	Total	Ave. Per Day*	Total	Ave. Per Day*	Total	Ave. Per Day*	Total	Ave. Per Day*	Total	Ave. Per Day*	Total	Ave. Per Day*
January					600	27	352	16	760	33	549	24	573	25	368	16	833	38	545	25
February					491	25	255	13	493	25	402	20	674	32	365	17	414	21	277	14
March					542	24	455	20	797	36	591	27	546	26	432	21	460	21	241	11
April	399	19	272	13	554	28	343	17	688	33	513	24	650	30	611	28	501	23	345	16
May	524	24	264	12	752	33	381	17	639	28	552	24	650	30	427	15	558	27	310	15
June	735	33	392	18	680	31	412	19	578	28	511	24	617	29	389	19	501	24	311	15
July	667	32	503	24	490	23	362	17	663	30	485	22	837	38	423	19	519	23	339	15
August	783	34	320	14	673	29	505	22	620	27	596	26	718	34	744	35	492	23	331	16
September	726	33	414	19	607	29	362	17	616	31	427	21	577	26	395	18				
October	448	21	361	17	510	23	492	22	574	25	396	17	714	31	463	20				
November	550	25	331	15	549	25	311	14	609	28	485	22	504	25	386	19				
December	617	28	344	16	553	26	320	15	574	27	317	15	685	30	644	28				
Total	7031	27	4188	16	7001	27	4550	18	7636	29	5824	22	7765	30	5347	21				

*Average computed through division of monthly total by the number of weekdays in that month.
Source: Office of the Federal Register.

TABLE II. 1977-1981 Tabulation of Total Pages (of final and proposed rules) Published in the Federal Register.

FEDERAL REGISTER PAGES

	1977		1978		1979		1980		1981	
	Total	Daily Ave*	Total	Daily Ave	Total	Daily Ave	Total	Daily Ave	Total	Daily Ave
Jan	5966	284	4244	193	6346	276	7226	314	10134	461
Feb	5838	292	4002	200	5170	259	6494	309	4592	230
Mar	5608	244	5617	244	7664	348	7478	356	5086	231
Apr	4711	224	4668	233	6212	296	7802	355	4706	214
May	5751	261	5169	225	6206	270	8174	372	4720	225
Jun	5831	265	5104	232	6838	326	7070	337	5064	241
Jul	5184	247	4870	232	6678	304	6922	315	5123	223
Aug	5066	220	5393	235	6434	280	6930	330	4392	209
Sep	9635**	438	6259	298	4756	238	6782	308		
Oct	3523	168	5507	250	6574	286	7738	336		
Nov	3914	178	5358	244	6392	291	6790	340		
Dec	4576	208	5060	241	8228	392	7606	331		
Total	65603	252	61261	236	77498	297	87012	334		

*Daily averages calculated by dividing the total number of pages into the number of workdays that month.

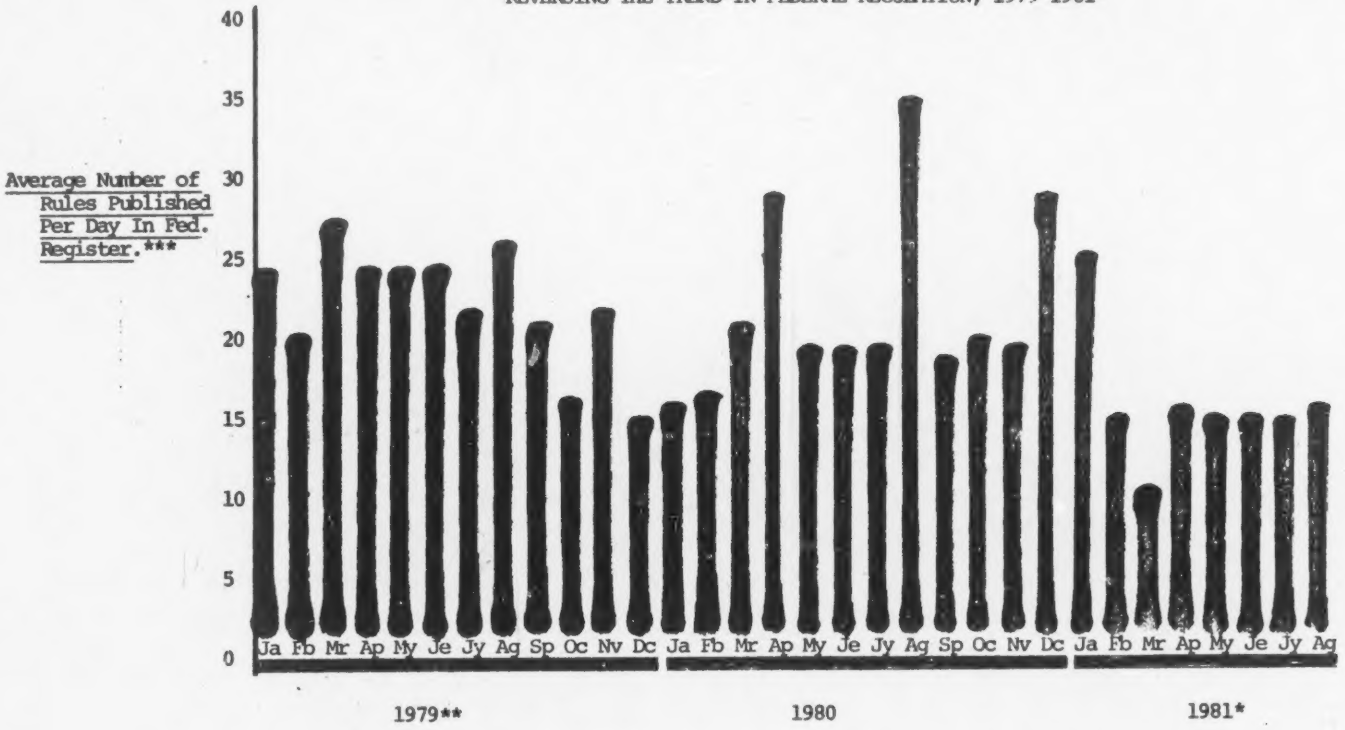
**OFR began charging for printing, by the page, on October 1, 1977.

Table III displays information about proposed and published rules over the past three years. This time period is particularly indicative of recent developments, because it ranges from 1979, when the daily regulatory output was greatest, to the present, where the data clearly reflect significant reductions in regulatory activity since February, 1981.

Except for January, when some unusually high activity occurred, 1981's data clearly indicate a significant downward trend in Federal regulatory activity through the first seven months. While there are many possible explanations for the unusual activity for December 1980, and January 1981, two factors account for the activity. First, there was a transition, and outgoing officials were anxious to complete work on regulations that had been under preparation for some time. In addition, some agencies may have been trying to promulgate their rules before the Regulatory Flexibility Act took legal and practical effect. The Office of Advocacy cannot prove this happened, but that explanation is made more credible when agencies argue, as they do from time to time, that a particular regulatory proceeding predates the RFA and thus is not bound by the Act's requirements.

TABLE III.

REVERSING THE TREND IN FEDERAL REGULATION, 1979-1981*



*Data for 1981 are available only through August.

**Using any accepted measure, 1979 was the all-time record high for Federal regulatory output.

***Proposed rules are used as the measure of burden here.

Source: data provided by the Office of the Federal Register and prepared by the Office of Advocacy, September, 1981.

Finally, Table IV compares 1981's first seven months with the same period for the previous year. Whatever statistical measure of regulatory output is used, the results are the same: regulation writing has declined by about 25% from 1980 to 1981.

For Advocacy, this reduced number of regulations has meant that the establishment of a monitoring system was made slightly easier because regulations were emanating from the government at a less hectic pace. For small businesses and entities, the effects were equally pragmatic. Appendix A offers additional comparisons of regulatory activity between 1980 and 1981. Thus, as the tables indicate, final rules are being published at a current rate of about 535 per month. This is not as high as the rate of about 650 final rules per month, which was the rate when P.L. 96-354 was passed. But, it is still more than enough regulatory activity to keep the Office of Advocacy very busy.

In considering these statistics, it is relevant that several factors in addition to the Regulatory Flexibility Act have also conditioned the Federal regulatory environment. The Office of Management and Budget issued guidelines for agencies to follow in implementing the Regulatory Flexibility Act and Executive Order 12044. Then, in January, the President initiated an ambitious campaign to reduce Federal regulation. There was a temporary moritorium on final rules, and the

TABLE IV

COMPARING EQUIVALENT PERIODS OF REGULATORY OUTPUT, 1980 v. 1981

Measure of Regulatory Burden comparing first 7 months of 1981 and 1980	1980	1981	1981 as % of 1980	Net Reduction* from 1980 to 1981
daily average no. FR pp., 1st 7 months	348	250	71.8%	28.2%
monthly avg. no. FR pp., 1st 7 months	7,261	5,477	75.4%	24.6%
daily avg. no. final rules pub. in FR, 1st 7 months	35	25	72.8%	27.2%
avg. no. final rules/month pub. in FR, 1st 7 months	658	535	79.7%	20.3%
avg. no. proposed rules/ month, pub. in FR, 1st 7 months	469	337	71.8%	28.2%

$$* \ 100\% - \frac{(1981 \times 100)}{(1980 \times 100)} = \text{column entry}$$

President issued Executive Order 12291, supplanting Executive Order 12044. The last major factor that I would like to mention as one conditioning the Federal regulatory environment is the Vice President's Task Force on Regulatory Relief, which has identified numerous regulatory and paperwork problems. I am pleased that the Office of Advocacy is working closely with that Task Force in a major effort to augment the Task Force's coverage of small business issues by soliciting small business opinions and identifying several of the most pernicious small business problems involving Federal regulations and paperwork.

B. Individual Case Disposition

Advocacy has devised a system to deal with its monitoring responsibilities under P.L. 96-354. I would like to emphasize two points about this system. First, every reasonable effort is made to ensure that all rules covered by the Act's requirements are detected and dealt with by the Office of Advocacy. Federal agencies should realize that, if they don't already. Second, we concentrate our attention where the need is greatest, that is, on the agencies that generate the number and kind of regulations that affect small businesses and entities the most. Thus we concentrate our limited resources on the areas of greatest concern to the RFA's intended beneficiaries.

Using carefully-prepared guidelines and procedures developed by senior staff members and professionals comprising the Advocacy Policy Group on Regulatory Flexibility, various members of the Advocacy Office staff process proposed rules and regulations that fall within the purview of the Act. There are five separate stages in the process, which includes numerous checks to avoid or correct errors and to ensure that rules and proposals will progress smoothly and predictably from each stage to the next. Briefly, the stages are:

1. ("Monitoring:") Each day, my staff monitors the Federal Register to note any proposed rules or other actions potentially subject to the RFA;

2. ("Logging":) Once identified, these rules (about 15 to 20 per day) are taken by the "Regulatory Flexibility Control Officer (RFCO), who logs them in, gives them an identification number, incorporates them into a file that is used throughout the remaining stages of the process as a repository for all significant actions, dates, signatures, documents, and the like;

3. ("Review":) Next, the Advocacy professional who monitors the agency that published the rule or proposed rule reviews the file. (Appendices B and C contain listings of all the agencies we monitor, the Liaison Officer the agency has

designated, and the Advocacy unit assigned to monitor that agency.) This professional review is the heart of our process. The professional initiates action concerning the rule according to his/her judgment. Action may include communication with the agency, trade associations, Advocacy "small business organizations," etc.

4. ("Follow-up":) Subsequently, as needed, the Advocacy professional takes additional measures to dispose of the case properly and to fulfil the prescriptions of the Act;

5. In response to initiatives taken by professionals and in order to maintain regular and consistent guidance and oversight for the system and institute methodological changes as needed, we also have a Regulatory Flexibility Review Group that meets each week and has the option of bringing problems or suggestions to the Chief Counsel for Advocacy if needed.

Presently, we have automated many facets of the system, and we are implementing further improvements on a continuing basis. Among other things, we are attempting to make our system partially compatible with the OMB's "Reports Management System." This feature will allow us to cross-tabulate some of our information with regulatory and paperwork information gathered from Federal agencies for clearance by the OMB. This approach not only strengthens the analytical and monitoring potential of our own system but helps make information systems in our agency compatible with that of the OMB, fulfilling one of the Paperwork Reduction Act of 1980's primary objectives.

C. Office of Advocacy Caseload under the RFA

The Office of Advocacy is implementing a very extensive computer software system that will allow us to identify and track regulatory developments on an agency and subject matter basis. We anticipate using these data to evaluate agency compliance, monitor our own professionals' efforts, and develop improvements in the monitoring system. I believe we have one of the best regulatory tracking systems that exists in the government today. The next section of this statement presents individual assessments of some agencies' compliance efforts. The evaluations are based on the data and the personal experiences of the Advocacy monitors who have dealt with these particular agencies. Although these data will never completely define the RFA's effectiveness, they provide us with a relevant benchmark on which to base our actions.

Since Advocacy automated its monitoring system on July 1, 1981, we have logged in 489 RFA items. Of these, 412 were certifications; 19 were IRFAs; and 18 were periodic reviews or agendas. The remainder were items involving agencies that say the RFA does not apply to them. In the future, we will have the capacity to generate more information for each of these categories.

D. Interagency Communication and Other Educational Efforts

One of the Regulatory Flexibility Act's express requirements is that a concerted effort be made by agencies to reach out into the realm of potentially affected small entities and attempt to increase their effective participation in the rule-making process. The larger and more comprehensive the information base for a rule, the better the rule should be *if* there must be one; and, the more practical it becomes to "tier" the rule. To make our efforts felt more widely, to ensure fuller compliance with the Act, and to support the spirit of "regulatory flexibility," Advocacy has undertaken several projects to popularize and ensure uniform application of the Act.

Ever since the Act passed, there have been meetings and staff training sessions to see that monitoring policies are applied consistently and knowledgeably. The Office of Advocacy also developed a *Handbook* for Advocacy professionals to use in monitoring agencies under the Act. Distinguished legal experts participated in some of the staff training. Continuing coordination and development have been a major function of the "Reg Flex Policy Group," which is comprised of senior Advocacy staff.

To assure Federal agencies' familiarity with the RFA and the Office of Advocacy, the Office has published the staff's current agency assignments and encouraged regular interaction between our professionals and their assigned agencies. More than any other way, this interaction has proven to be the best vehicle for interagency communication and effective monitoring of the agencies' compliance with the Act.

In discussing Advocacy's efforts at spreading the gospel of Regulatory Flexibility to other agencies, the issue arises of whether the Office of Advocacy should issue guidelines to the other agencies on compliance with the Act. The record of agency compliance thus far with the Act is mixed. The best experience and judgment of the Advocacy staff is that the most effective method for encouraging an agency's active interest in the Regulatory Flexibility Act is to maintain continuous and persistent monitoring by the Office of Advocacy of an agency on a case-by-case, issue-by-issue basis.

This Committee and the Congress clearly also contemplated that the best Regulatory Flexibility compliance would be achieved on a case-by-case basis. My own desire is to provide the agencies some informal guidance by compiling and distributing a brief model Initial Regulatory Flexibility Analysis (IRFA) or making available a set of IRFAs that are exemplary in one way or another.

There are so many factors involved in the regulatory process, and there is such diversity among Federal agencies and in the small business community, that I am not entirely sure that guidelines can be produced to address every possible situation. We are exploring several approaches to providing informal guidance, which some have suggested, is the proper Advocacy response. Guidelines that are very detailed and absolutely comprehensive signal that Advocacy is more interested in form and less in substance: and, they imply that Advocacy is using a design standard to regulate a process that calls for performance standards.

Advocacy will continue its efforts to achieve distribution of a model IRFA while continuing to emphasize rule-by-rule monitoring as the most effective method of making the Act workable for other agencies.

The Office of Advocacy has completed a directory of small business trade and other associations, which we are in the process of having published and distributed to other agencies. The purpose of the directory is to provide information that agencies may use in seeking small business information and reaction to proposed rule changes.

III. ELEVEN EXAMPLES OF "COMPLIANCE"

As indicated in the introductory remarks, the Federal bureaucracy's response to the Regulatory Flexibility Act has been to show an overall improvement in sensitivity to small business regulatory problems. The response has been mixed thus far, and not equally commendable from agency to agency. To illustrate this record, we will briefly describe the record so far of several Federal agencies. These examples of compliance run the full gamut from very good compliance to hardly any compliance.

The agencies described have different types of regulatory functions. Some are very small, and some are very large. We believe the record thus far illustrates that there is no particular pattern by size or type of agency to compliance with the Regulatory Flexibility Act. The key element for compliance, if there is just one, seems to be a general interest in small business problems and an openness on the agency's part to dealing with the small business community.

Following are general comments on several different agencies' regulatory performance during the first nine months of 1981, since the Regulatory Flexibility Act has been in effect.

DEPARTMENT OF LABOR

Since January 1, 1981, the Department of Labor (DOL) has issued fifteen proposed rules, which they have attempted to certify as not having an impact on small business. In some of those cases, Advocacy informed the Department of Labor that the certifications were inadequate or otherwise not legally sufficient. This misunderstanding, however, was probably a result of the newness of the law and not an intentional error. All subsequent certifications by DOL have been exemplary. The Department should correct these incomplete certifications when the final rules are issued.

DOL has performed a commendable job on its initial regulatory flexibility analyses (IRFAs) accompanying proposed changes in Davis-Bacon regulations, the Service Contract Act regulations, and the Office of Federal Contract Compliance Programs (OFCCP) regulations. The Office of Advocacy is currently analyzing these IRFAs. These IRFAs are not necessarily as comprehensive as they might have been in particular aspects, and we intend to so advise DOL when we file comments on the proposed rule changes. But the IRFAs do make a serious effort at informing the small business community of the effects and rationale behind certain proposed changes. The IRFAs reflect an apparent serious commitment by DOL to comply with the requirements of the Regulatory Flexibility Act and the Department's apparent interest in eliminating burdensome and costly regulations for smaller businesses.

DOL's cooperation with the requirement of the RFA on periodic agendas is excellent. Both the Agenda and Periodic Review Plan have facilitated Advocacy's ability in monitoring DOL regulations and rules. I recommend DOL's agenda and Plan as models for other agencies to follow.

Since inception of the Act, DOL has been quite cooperative in carrying out the provisions that lie therein. DOL is responsive to the concept of orienting regulations toward small businesses and has operated in good faith in attempting to relieve regulatory burden and disparity for small entities.

In addition, DOL has maintained two high level RFA officers in their efforts to emphasize the importance of the Act. After some initial confusion surrounding the implementation of RFA, DOL's record of compliance has moved from fair-to-very good. We look forward to a continually improving relationship between the Department of Labor and the small business community.

It should be noted that DOL activities relating to small business are very typical of the type that will never be totally cured by the Regulatory Flexibility Act alone. Most of DOL's impact on small business, especially in the Occupational Safety and Health Administration (OSHA), Mine Safety and Health Administration (MSHA) and Wage and Hour issues, is derived not from regulations per se but from enforcement priorities and practices. Hopefully, raising the sensitivity of the Department to small business at the regulatory process level will have a beneficial impact on the enforcement practices of the Department as well.

DEPARTMENT OF TRANSPORTATION

The Department of Transportation (DOT) is a large agency encompassing nine operating administrations: U.S. Coast Guard, Federal Aviation Administration, Federal Highway Administration, Federal Railroad Administration, National Highway Traffic Safety Administration, Urban Mass Transportation Administration, Saint Lawrence Seaway Development Corporation, Research and Special Programs Administration, and the Maritime Administration.

Even before the Act's effective date, this agency had been in a leading position among large agencies in implementing RFA. At DOT, the Office of General Counsel has provided direction on regulatory flexibility issues to the subordinate operating administrations. The designated "Regulatory Flexibility Official" for the agency is the Assistant General Counsel for Regulation and Enforcement, providing a position of prominence for RFA compliance activities.

The only weakness in the agency's compliance effort is one that is perhaps inherent in an organization of DOT's size. Continuity of compliance level is difficult to maintain due to the necessity of communicating with many widely geographically dispersed units, all of which have authority to issue regulations independently.

The Office of Advocacy has monitored a total of 142 Notices of Proposed Rulemaking (NPRM) for the Department of Transportation. One class of Rules issued by two of the operating administrations of this agency, the U.S. Coast Guard and Federal Aviation Administration account for 124 of these NPRMs: These are rules that involve an established body of technical regulations such as FAA-controlled airspace regulations, for which frequent and routine amendments are necessary to keep them operationally current. The Department informed Advocacy that they are considering offering a legislative amendment to RFA that would authorize the Chief Counsel for Advocacy to exempt rules of this type from compliance with RFA.

DOT prepared one IRFA, involving the issue of minimum standards of financial responsibility for motor carriers. It merits noting that DOT prepared an IRFA in this rulemaking, even though the rulemaking was commenced prior to January 1, 1981, and required by the Motor Carrier Act of 1980. Thus DOT did not attempt to avoid a consideration of small business impact by pleading either the issue of statutory mandate or time constraints.

In summary, the Department of Transportation has not only complied with RFA in an exemplary manner but has assisted the Office of Advocacy in its initial efforts directed toward ensuring compliance with the RFA. The Department's agenda and periodic review plan are also quite good.

THE DEPARTMENT OF INTERIOR

From January 1, to September 15, the Department of Interior's (DOI) compliance was quite commendable. There were at least fifty-one certifications, for example, and all were timely and adequate. This came as no surprise, because the Department had already given some early indications that it was taking compliance quite seriously. Although the DOI had not particularly distinguished itself as an agency sensitive to small business concerns before the Act, there is every reason to believe that the agency's response to the Regulatory Flexibility Act has been thorough, positive, and responsible.

On December 24, 1980, the DOI published interim rules for agency officials to use in complying with the RFA. Not only did this Federal Register publication of interim rules distinguish the Department by being the first such guidelines announced by any Federal agency but, more importantly, the rules were outstanding examples of a fair, sensitive agency response to the RFA. The reason for this exceptional approach is attributable to two primary factors: first, the Department wanted to cooperate, so it adopted a positive attitude and strategy. Second, it then worked very closely with the Office of Management and Budget's desk officer for the DOI, who coincidentally had worked closely with Advocacy, OMB, and other agency representatives to develop OMB's guidelines for all Federal agencies to follow in implementing regulatory flexibility under Executive Order 12044. Credit should also be given to the desk officer, who made a special effort to see that the agency assigned to her met both the letter and spirit of the law.

Right on schedule, the DOI published a Semi-Annual Agenda under Executive Order 12044. Then, in April of 1981, the Department published its first Semi-Annual Agenda under the aegis of P.L. 96-354. The agenda was very thorough and prompt. We understand that preparation of the next scheduled Semi-Annual Agenda is nearly complete, and the Periodic Review Plan requirement has also been met. In fact, the Department's internal procedures mandate a more frequent review than the one prescribed by P.L. 96-354.

To date, the DOI has produced three Initial Regulatory Flexibility Analyses (IRFAs):

1. The Office of Surface Mining's modifications in the abatement of violations under 30 CFR 722.12 and 843.12.

These modifications, as the adequate IRFA (April 1981) shows, have a positive effect on small businesses.

2. The Bureau of Land Management's amendments to State Indemnity Selection Regulations under 43 CFR 2091 and 2621.

The IRFA is adequate, and the finding is that there is no significant economic effect on a substantial number of small businesses.

3. The Fish and Wildlife Service's prohibition against the possession or use of non-steel shot by waterfowl hunters in prescribed zones under 50 CFR 20.21(j) and 20.108.

The IRFA is very good, and the Service even tried to use Advocacy's "small business data base" for some of their analysis. The potential effects on small businesses, which were difficult to assess, are negative but have been minimized quite effectively because of the proposed rule's extraordinary provisions to ensure advance warning to those influenced by the rule.

In one minor case, the Department published notice of effective dates of final rulemaking and requested comments, but the announcement in the Federal Register (April 20, 1981) came five days after the effective date (April 15, 1981)! This was a rare exception.

There are two major rules that the Department has determined to warrant combined analysis under P.L. 96-354 and Executive Order 12291. The Bureau of Land Management's proposed rulemaking for Oil and Gas Leasing in Alaska has a Preliminary Regulatory Analysis scheduled for November 1981. There will be a Final Regulatory Analysis under 12291 in March 1982. These two analyses will be treated as an IRFA and Final Regulatory Flexibility Analysis (FRFA).

The second major rule this year concerns migratory bird hunting regulations issued by the Fish and Wildlife Service. Paradoxically, there can be no hunting at all in signatory countries under the Migratory Bird Treaty unless there is regulation. Hence, the Regulatory Flexibility Act's requirements are curiously juxtaposed against the Treaty's requirements. The Fish and Wildlife Service waived the IRFA requirement on January 28. 1981. The accompanying rationale was tantamount to an IRFA itself, given its comprehensive explanation of the situation. At the same time, the Department promised to prepare and deliver a Final Regulatory Flexibility Analysis (FRFA) under sec. 601-602, P.L. 96-354. That FRFA is imminent and will be closely examined after its submission.

In sum, the Department of Interior's performance under P.L. 96-354 has been exemplary in virtually every respect. Eventually, it is hoped, they will begin tiering regulations that cannot be prevented and. they will increase their efforts to secure broader participation in the rulemaking process.

DEPARTMENT OF DEFENSE

The Department of Defense (DOD) poses a special problem. because it is not entirely clear whether the Regulatory Flexibility Act (RFA) applies to its regulations. Because of the specific exemption for regulations pertaining to military functions in §553(a)(1) of the Administrative Procedure Act (APA), which the RFA amends, it has consistently been the position of the DOD that the RFA does not apply to that agency. Because of the military function exception, almost all DOD regulatory functions are not subject to APA notice and comment rulemaking.

Thus, the passage of the RFA has had no impact on DOD's proposed regulations. Except for the U.S. Army Corps of Engineers (ACE), DOD has totally ignored the RFA. The Assistant General Counsel for Logistics in DOD has written that "the DOD does not issue any regulations subject to the Act" (referring to the RFA). With the exception of an official in the U.S. Army Corps of Engineers, no regulatory flexibility officers have been appointed in the DOD. Nor has DOD shown the slightest interest in special training or sought any information about the RFA or about the Act's underlying concept of regulatory tiering.

From January 1, 1981, the effective date of RFA, to October 1, 1981, the DOD has published seventeen notices of proposed rulemaking in the Federal Register. Of all these proposed rules, there were no initial regulatory flexibility analyses (IRFAs) and only four certifications of no substantial impact on a number of small entities. Two of these certifications were improperly done. Significantly, however, on May 29, 1981, the DOD published a semi-annual agenda of regulations, pursuant to Executive Order 12291. As expected, in the agenda's summary, the DOD stated that since the agenda was voluntarily published consistent with the Executive Order, the RFA did not apply. I would like to point out that within DOD's agenda was a section published by the ACE. The ACE stated that pursuant to the RFA, it was publishing "for public information a list of regulations pertaining to the civil functions of the Department."

The ACE issued three of the aforementioned seventeen DOD notices of proposed rulemaking. ACE certified all three as having no substantial impact on a number of small entities, though one contained minor technical shortcomings. All three of these regulations had to do with the designation of danger zones off the coasts of Hawaii and California. To the credit of ACE, it is the only division within the DOD which has appointed a regulatory flexibility officer.

Because of the broad-ranging use of the military function exception to the APA, the DOD appears to have decided that outside of the civilian public works function of the ACE, every regulation proposed by DOD pertains to its military functions, and all regulations therefore are exempt from the provisions of the APA and the RFA.

The Office of Advocacy finds this attitude on the part of DOD profoundly disturbing, because by using this broad-brush approach, the DOD has included a whole class of significant regulations which would have a definite substantial impact on a number of small entities. By this we refer to DOD's procurement regulations and to the impact of those regulations on small business and other small entity contractors for DOD procurement.

DOD argues that because of §553(a)(2) of the APA, its procurement regulations, aside from being military functions, are exempt from notice and comment rulemaking, and accordingly, from the RFA. We believe this is too narrow a reading of DOD's responsibilities. RFA does apply to procurement regulations because §603(a) of the RFA states IRFAs must be conducted "whenever an agency is required by §553 of this title (Title 5 U.S.C.) or any other law (emphasis added), to publish general notice of proposed rulemaking for any proposed rule. . . ." The "other law" regarding procurement regulations is P.L. 93-400 and its amendment P.L. 96-83, which is the enabling legislation of the Office of Federal Procurement Policy (OFPP). This statute specifically states that the functions of the OFPP Administrator (who has overall leadership in developing and implementing procurement policies) include "establishing criteria and procedures for an effective and timely method of soliciting the viewpoints of interested parties in the development of procurement policies, regulations, procedures, and forms." All procurement regulations are subject to this type of notice and comment rulemaking. and DOD's procurement regulations are not exempted from this requirement.

This is obviously a complicated area, and this Subcommittee might well wish to pursue the issue of procurement and the Regulatory Flexibility Act in separate hearings.

INTERNAL REVENUE SERVICE

In the important subject of tax policy and procedure, the Internal Revenue Service (IRS) has purported to comply with the letter of the Regulatory Flexibility Act (RFA). But the IRS has certainly not embraced the spirit of the law. The provisons of the Act apply to "rules" of "agencies" for which the agency publishes a general notice of proposed rulemaking pursuant to Section 553(b) of the Administrative Procedure Act (APA). However. interpretative rules, general statements of policy, and rules of agency procedures, organization or practice are specifically exempted from the requirements of APA Section 553(b). Thus, the APA applies to so-called legislative rules.

Generally, a legislative rule is promulgated by an agency pursuant to a specific grant of legislative power by the Congress. Interpretative rules do not rest on any specific statutory delegation of authority. Instead, they are promulgated under the authority of delegated interpretative power to assist in the implementation of a statute by an agency.

In the tax area, the Treasury Department has taken the position that the great bulk of IRS regulations are interpretative. It should be noted that IRS usually follows the routine requirements of the APA even with respect to interpretative rules. Nevertheless, in the context of the Regulatory

Flexibility Act, the Internal Revenue Service has utilized the distinction between interpretative and legislative regulations and the exemption of the former from the provisions of the APA to minimize efforts under the RFA, in the tax area.

In those instances where Congress has specifically delegated authority to the Treasury Department/Internal Revenue Service in certain sections of the Internal Revenue Code to write detailed rules, the IRS has considered regulations issued pursuant to such provisions to be legislative and has fully complied with the requirements of the RFA applicable to such regulations. Examples are regulations issued in the LIFO inventory area and those promulgated pursuant to the Windfall Profit Tax Act of 1980. However, where regulations have been issued. without such specific statutory delegation of authority, the Treasury Department has claimed exemption from the RFA on grounds that such rules are interpretative, and therefore, not subject to the Act.

Since the majority of tax regulations issued by the Treasury Department/Internal Revenue Service are described as interpretative, this position arguably enables the bulk of tax regulations to escape the scrutiny of the substantive requirements of the RFA despite what the Office of Advocacy considers to be their potential substantial impact on small business. We recognize that IRS's narrow position in this regard enables them to argue that they have to meet only the technical requirements of the law. However, apart from any reservations we have regarding the "interpretative" nature of the bulk of tax regulations, the Office of Advocacy believes this position. even if assumed to be based on solid legal grounds, effectively circumvents the spirit or itent of the RFA in the tax area and provides the basis for a continuation of the status quo. In view of the importance of taxes to small businesses, we find this situation unacceptable and recommend this area as a suitable subject for legislative investigation and action.

FOOD AND DRUG ADMINISTRATION

The Food and Drug Administration (FDA) can best be characterized as a small agency that has exhibited a fair level of compliance under the Regulatory Flexibility Act (RFA).

Out of the approximately twenty proposed rules to which the RFA applied, FDA certified sixteen. Over half of these certifications were just barely adequate, because the accompanying statement of reasons were conclusory, or because beneficial impacts were not sufficiently measured or explained. These analytical problems were repeatedly discussed with the FDA Regulatory Flexibility Officer. The FDA has persisted in issuing this type of certification, and the Office of Advocacy has clearly informed the FDA that the Office of Advocacy is concerned with the minimal information in the agency's analyses.

One IRFA was performed. It was generally adequate except that it stressed that the proposed rule did not have any adverse economic impact.

At the beginning of the year approximately three rules were issued without certifications or IRFAs. The agency is aware that it has an opportunity to correct these oversights at the time the final rules are issued.

The FDA did not issue a separate semi-annual agenda, however, the agenda issued by the Department of Health and Human

Services was timely and adequate. No particular care seemed to have been taken to identify future rules that might have a significant small business impact. FDA's periodic review plan was timely and more than adequate. The agency invited the submission of data, information and views to assist it in deciding priority order of the review.

Generally speaking, the FDA's overall posture toward compliance with the RFA from January 1st to mid-September has been fair. FDA had high marks for its attitude toward small business and tiering before the RFA was passed. Although the agency has made good faith efforts to comply with the Act and cooperate with the Office of the Chief Counsel for Advocacy (OCCA), it has been stubbornly conclusory in its reasoning. The trend of its compliance is best described as having gone from weak-to-good.

There has been some question about whether the agency has the commitment to follow through on recommendations we have given to the Regulatory Flexibility Officer. Although she apparently understands the Advocacy opinion regarding FDA's performance thus far, the agency has been slow to respond.

The FDA is illustrative of an agency which apparently feels that deregulatory or improved rules do not trigger the regulatory flexibility analysis requirements. The law, however, contains no such exemption, especially in a technical subject area. The agency has the responsibility to explain its rationale and the impact of its decision. The small business community ought to have the opportunity to judge whether further deregulation or improvements are appropriate on a particular issue.

ENVIRONMENTAL PROTECTION AGENCY

In the first nine months of this year, the Environmental Protection Agency (EPA) has already acquired substantial experience with implementing the RFA. EPA has issued 100 certifications over this period and omitted certifications in only five instances. All of the omissions occurred in the first four months (three in January) and were apparently oversights by the agency. EPA has agreed to issue final certifications with the final rules at the time of promulgation to remedy these omissions.

The vast majority of the certifications concern routine matters (e.g. state air pollution plans, pesticide tolerances) and contain adequate explanations. In several instances, the agency has certified regulations on the basis of a beneficial impact, rather than an insignificant impact. We have been informed that EPA wishes to discuss this issue with us in the near future. They are presently undecided on whether a regulatory flexibility analysis may be required for positive benefits.

EPA has issued only one IRFA in this period (effluent guideline for porcelain enameling plants). As with most of its past regulatory analyses, it was very comprehensive and professional. In contrast, EPA has specifically acknowledged that it has failed to prepare IRFAs for two hazardous waste regulations (which won't be ready for months). EPA is under a court ordered deadline to issue these regulations and could not complete the detailed analyses required by these regulations. We cannot fault EPA for the lengthy delay.

As for the agenda, EPA combined the agency requirements of the RFA and Executive Order 12291, thereby combining "major regulations" with regulations having an impact on small entities. It was published on April 27, 1981, in compliance with the Act. The agenda offers brief but adequate descriptions of all rules which EPA expects to act upon. EPA used a conservative approach to RFA compliance by including regulations where it could not yet determine whether there would be a significant small entity impact.

EPA's periodic review plan was published on July 16, 1981 (due on July 1, 1981). It provides the criteria that EPA will utilize in choosing regulations for review and invites public suggestions for regulations to review. EPA also initiated review of three regulatory programs which were described in the plan. The plan provides that EPA announce with each agenda the regulations it has targeted for review. In the subsequent agenda, EPA will report its decision on each regulation listed, whether to revise, rescind or continue the rule unchanged. This plan seems to be adequate for compliance with the RFA. However, a more satisfactory plan would have already indicated at least a tentative plan for reviewing rules for the next few years.

In establishing its good track record in implementing regulatory flexibility, EPA is benefiting from its extensive experience over the years of exploring regulatory alternatives. EPA is well known for its innovative approaches to rulemaking, and for its detailed economic analyses. The agency appears to be sensitive to the needs of small businesses. It is also very accustomed to implementing regulatory reform, as reflected by EPA's excellent implementing guidelines under Executive Order 12044, the predecessor to Executive Order 12291. Therefore, EPA appears to have little difficulty implementing the few mechanical changes posed by the RFA.

The ease of compliance with RFA is likely the result of EPA's adoption of the RFA - type procedures in advance of the RFA's passage. For example, an excellent model IRFA is provided by numerous large EPA analyses of the economic impact of proposed air or water pollution regulations. The RFA requires little that EPA did not voluntarily provide before RFA. The only major change for EPA is the required certification statement which was previously unnecessary. EPA had some initial trouble tracking all its regulations for this requirement, but this problem has apparently been resolved.

SECURITIES AND EXCHANGE COMMISSION

The Securities and Exchange Commission (SEC) seems to have embraced the intent of the Regulatory Flexibility Act (RFA) and has attempted to review each of its six major statutory securities laws with a view towards assessing the implications of RFA. This has been done in a timely and comprehensive manner. Even though the Office of Advocacy may not agree with some of the specific standards established for "small firms" or "small entities," the thorough review undertaken by the Commission epitomizes the initiative that all agencies should be taking in the area.

For example, on March 6, 1981, the Office of the Chief Counsel for Advocacy submitted comments to the SEC for the purpose of helping to define "small business" and "small organizations." Under one of the disclosure statutes, the Securities Act of 1933, the Commission proposed a $2.5 million asset test for a small issuer. The Office of Advocacy suggested that $10-$15 million in assets/revenues would be more appropriate. The Office of Advocacy has some important research in this area that we have shared with the Commission to add to their knowledge with respect to size standards of issuers and shareholders protection.

Other size definitions were presented for other securities statutes monitored by SEC. Some examples of small entities' definitions are "small" investment advisory newsletters or "small" investment firms that invest in small firms. Advocacy suggested some definitions that differed with those found in the SEC's proposal. On August 6, 1981, the SEC announced proposed rules that would expand the use of exemptions from registration requirements to make it cheaper and easier for small business to raise money for securities offerings. To streamline current exemptive rules, the SEC has proposed to renumber current exemptive rules and bring them under one umbrella heading, Regulation D. This would govern offers and sales of securities without costly registration requirements under the Securities Act of 1933. Also, the SEC has made a first time major effort to coordinate the drafting of rules with state securities officials.

On September 2, 1981, the Office of Advocacy replied to the Commission's proposed plan for a 10-year review of Commission rules. The agenda issued was pursuant to the requirements of the RFA. Specific regulatory provisions under the SEC's major statutory functions were established for annual review over a 10-year period running through 1989, with individual analyses of the major rules to be reviewed for the next 12-month period. Although, Advocacy may not necessarily agree with the SEC's review priorities, the important point is that the priorities are on the record and subject to small business scrutiny.

Therefore, although we are still concerned with SEC's specific size definitions, the SEC has made major efforts in regulatory reform on behalf of the small business community. We believe that the comprehensive nature and the timeliness of their approach is one which should be established by all agencies whose rulemaking affects small business and small entities.

INTERSTATE COMMERCE COMMISSION

Prior to the Regulatory Flexibility Act (RFA), and under the direction of E.O. 12044, the Interstate Commerce Commission (ICC) was the leader of the independent regulatory agencies in regulatory initiatives beneficial to small business. The liaison focus during this period was maintained by the Commission's Office of Small Business Assistance. Subsequent to the passage of RFA, the regulatory liaison was established in the Office of the Managing Director. An Assistant Managing Director was designated as the Commission's "Regulatory Flexibility Official," the primary liaison with the Office of the Chief Counsel on RFA matters.

With the advent of this organizational change, small business initiatives began to suffer. The level of compliance with RFA was poor to non-existent. Advocacy's monitor attempted, through written and oral communications, to bring the Commission's issuances into compliance with RFA. Meetings were held with Commission officials, including the "Regulatory Flexibility Official," the Commission's General Counsel and other senior officials. But the level of compliance did not improve.

The Office of Advocacy has had considerable contact with the Office of Chairman Reese Taylor, and we have been assured the ICC will show a better record of sensitivity toward regulatory flexibility. The "Regulatory Flexibility Official" is now the Associate Director of the Office of Proceedings. A Commission directive has been issued which directs strict compliance with RFA and sets forth procedures for such compliance. The Office of Small Business Assistance has been placed in the Commission's issuance clearance process; and the Chairman's Chief of Staff has been assigned general oversight authority for RFA compliance. The Chairman's Chief of Staff also set up a seminar on RFA compliance for the Commission staff and invited the Chief Counsel for Advocacy to provide discussion leaders.

The trend of the Commission's compliance level should be better since these events took place. We understand that the Chairman has announced to the Commission staff that he views compliance with RFA as a serious and important requirement which the Commission must fulfill.

A total of 23 Notices of Proposed Rulemaking (NPRM) issued by the Commission have been monitored by the Office of Advocacy subsequent to the effective date of the RFA. Twenty-two of these 23 NPRMs were certified as having less than significant economic impact on a substantial number of small entities, of these certifications, eight were acceptable and fourteen unacceptable in the judgment of Advocacy's monitor, and the ICC has been asked to provide further information to justify the certification. One NPRM contained an Initial Regulatory Flexibility Analysis which was acceptable.

The agency produced a well prepared and acceptable agenda in April 1981, but it has not yet published a Periodic Review Plan. The Commission's "Regulatory Flexibility Official" has advised us that the plan will be published shortly.

Advocacy's record of dealing with the ICC is fairly representative of the process of "breaking in" an agency to the Regulatory Flexibility Act requirements, when the agency did not indicate much enthusiasm for embracing, on its own, the goals of the Act. It took some time for the ICC to evolve to the point where an interested and important official in the regulatory process was assigned the responsibility and given support by agency leadership committed to the Act. Now that this is apparently the case, the small business community should be able to assess whether the substance of the ICC's actions adequately take into account the situation of small business.

FEDERAL TRADE COMMISSION

The lower level of proposed rulemaking is clearly demonstrated by the Federal Trade Commission (FTC) regulatory activity since January 1, 1981. Since that time, the FTC has proposed only two rules that are subject to the Regulatory Flexibility Act (RFA). In both of these instances, the proposed rules were properly certified as having no significant impact on a substantial number of small entities. At this time, no IRFAs have been prepared.

The first of these rules would require that manufacturers of pulse combustion and condensing furnaces test them in accordance with the Department of Energy (DOE) procedures and provide a fact sheet for distribution by the sellers of energy efficiency information. The rule does not have a significant impact on a substantial number of small entities because there are only three manufacturers of this type of furnace (each employing over 500), and the distribution of the fact sheet by distributors and sellers is consistent with current practices for conventional types of boilers and furnaces. The certification of the FTC was a good one in that it provided the exact kind of information that those regulated as well as the Office of Advocacy needed to make an informed assessment of the rule's potential impact.

The second rule proposes technical changes in the pre-merger notification requirements of the Hart-Rodino-Scott bill designed to resolve confusion and reduce unnecessary paperwork. Again, the certification was adequate to allow a proper assessment of the proposed rule's impact.

The FTC has published both a regulatory agenda and a periodic plan for review. Both were timely and adequate.

The agenda is very complete and presents enough information to permit the public, when reviewing the agenda, to understand the immediate future regulatory plans of the FTC. For each rule listed by the agency a description of the rule and its objectives, the legal authority, the timing and an individual responsible for its implementation are published in the Federal Register.

In its periodic review plan, the FTC intends to complete its annual review for the preceding year and begin its review of those rules scheduled for the next twelve months at the time it publishes its regulatory flexibility agenda in October of each year. In this way, it will be able at the same time to publish in the agenda any contemplated rule revisions resulting from the previous year's review of existing rules. The FTC also published a schedule of anticipated rule reviews.

The FTC has been very compliant with the RFA and the only caveat in overemphasizing their compliance is that it must be viewed in light of the minimal regulatory activity that the FTC has engaged in this year. Whether this is due to the struggles they have suffered through in the last few years about the scope of their authority or the general atmosphere of limiting the issuance of any regulations during the past six months, the FTC has not issued any controversial regulations since the beginning of 1981.

In sum, it appears that the FTC is in full compliance with both the letter and spirit of the RFA. The test still remaining, however, is the degree of compliance that the FTC will exhibit when extensive analysis is required.

FEDERAL COMMUNICATIONS COMMISSION

The Federal Communications Commission (FCC) can best be characterized as a large and important economic regulatory agency which overall has shown a fair level of compliance with the Regulatory Flexibility Act (RFA).

Individual bureaus within the agency have earned high grades in compliance. For example, the Office of Science and Technology and the Broadcasting Bureau have produced high quality IRFA's. Whenever these bureaus have not had estimates of the number of small businesses potentially affected by a proposed rule, they invite the submission of data that will provide them with the figures. The record of these bureaus has greatly improved since January. Initially, their IRFAs were vague and conclusory. Now, they are more substantive and well-reasoned.

The good records of the Science and Technology and the Broadcasting Bureaus can be contrasted to the minimal compliance of the Common Carrier and Private Radio Bureaus.

The importance of the RFA in the minds of small businesses affected by FCC regulations has been most evident when an analysis has been less than rational and well-developed. Small businesses affected by the FCC have been quick to alert the Office of the Chief Counsel for Advocacy to inadequate

IRFAs. The weaknesses inherent in the inadequate IRFAs have been that they have discounted the small business impact or maintained that the proposed rule achieved a policy objective that did not lend itself to accomplishment through alternative methods.

The FCC has certified a number of its rulemaking actions as not having a substantial impact on small entities and has generally provided adequate reason for that conclusion. The agency has published a semi-annual agenda and periodic plan of regulation review.

Initially, the FCC was not particularly responsive to the RFA. The agency maintained that it did not regulate many small entities. It was interested in fulfilling its deregulation objective, confident that benefits would trickle down to small business without any determined effort on its part. Nevertheless, FCC's Regulatory Flexibility Officer has always made a substantial good faith effort to comply and cooperate. She has encouraged the improvement that has occurred in the most cooperative bureaus, and she has prodded along the minimally compliant ones.

The FCC's status and record regarding regulatory flexibility illustrate several important factors. First, the Office of Advocacy has noted significant improvement in both the form and substance of FCC actions as they relate to small business. The law has forced the agency into considering how their actions affect small business, and the consideration seems to be inspiring some of their regulatory decisions. It is also significant to note that the FCC seems to embrace the concept of doing an analysis even when they regard the impact of their regulation to be beneficial to small business. The Regulatory Flexibility Act does not stand in the way of deregulations.

Advocacy's experience with the FCC also illustrates the importance of the active involvement of the small business community and trade associations in the regulatory monitoring process. The subject matter of FCC regulation is often so complex and sophisticated that the Office of Advocacy's judgment on the agency's compliance will never be as informed as that of the actual small businesses being affected by the actions.

Most importantly, there is no procedural regulatory mandate affecting the FCC except for the Regulatory Flexibility Act. The FCC is not bound by Executive Orders, and a massive reform of their substantive authority still is pending in Congress. While the leadership of the Commission obviously deserves considerable credit for the substance of many reforms, the fact that there seems to be a new sensitivity in analysis and action toward small business at the FCC can be traced to the Regulatory Flexibility Act.

CONCLUSION

The key issue before this subcomittee is the success of the Regulatory Flexibility Act. I believe the record after nine months illustrates that the law is beginning to fulfill the purpose that the Congress intended when it was passed last year, to relieve the regulatory burden on small entities. The beginning months of the RFA have happily coincided with a period during which the pace of new regulation writing was significantly slowed. There is enough of a record, however, to allow us to state that the RFA is a statute which the agencies can work with, which the Office of Advocacy can apply, and which will achieve benefits for the small business community.

The Office of Advocacy has learned not to expect that every Federal department or agency will be equally inclined to comply with this statute. As the preceding agency descriptions show, most major agencies which deal with small business profess an active interest in complying with the Act. But looking beyond the tangible record of public statements and certifications, it is clear that there are highly variable levels of enthusiasm among and within agencies for worrying about how their actions may have a significant economic impact on a substantial number of small entities.

The role of the Office of Advocacy is crucial in this process. The RFA invests the Office of Advocacy with the function of pushing along the Federal agencies toward a greater awareness of how their actions impact small entities. The Office of Advocacy will continue to monitor, advise, compliment and criticize agencies for their performance under the RFA. Even if the pace of new Federal regulation continues at its current lowered level. the agencies will be tested by their progress on the agenda for reviewing regulations. The Congress correctly recognized that existing regulations represent a very large share of the problem. Advocacy will be particularly interested in the progress agencies make on the agendas.

I believe that the law strikes the right balance institutionally between the Office of Advocacy and the other parts of the government. Our relationship with the Office of Management and Budget (OMB) has been, on the whole. cooperative and mutually productive. OMB has a broader management role and need not be particularly concerned about small business. The special position of the Office of Advocacy represents a unique opportunity for small business to have a committed and effective voice in regulatory management. At the same time, other Federal agencies should realize that the definition of their relationship with the Office of Advocacy is in their own hands. It can be either adversarial or cooperative. I hope that in all cases it will be cooperative. However, as we all get more experience dealing with the requirements of the Regulatory Flexibility Act, that cooperation should be measured less in terms of certifications and analyses and more in terms of actual regulatory change. which will diminish the economic burdens on small business and other small entities.

I regard this report as only a preliminary look at the Regulatory Flexibility Act. I look forward to the continued interest of this Committee in the progress of the Office of Advocacy and the Federal regulatory agencies in dealing with the RFA. The regulatory environment has many large and strong constituencies. The active interest of the Congress and the small business community is necessary to ensure that the Regulatory Flexibility Act has an opportunity to work.

AGENCIES MONITORED BY THE OFFICE OF ECONOMIC REGULATORY POLICY

Appendix B

Office Director - Doreen Thompson 653-6036

AGENCY	Department
TRADE REGULATION	
Federal Trade Commsion	
ENERGY/UTILITIES	
Economic Regulatory Administration	DOE
Federal Energy Regulatory Commission	"
Power Administrations	"
Energy Information Administration	"
Tennessee Valley Authority	
Alaska Natural Gas Transportation	
Rural Electrification Administration	Agri.
Nuclear Regulatory Commission	—
AGRICULTURE	
Agriculture Marketing Service	Agri.
Agricultural Stabilization & Conservation Service	"
Commodity Credit Corporation	"
Office of Transportation	"
FISHERIES	
NOAA	DOC
TRANSPORTATION	
Coast Guard	DOT
Federal Maritime Commission	
Maritime Administration	
Federal Aviation Administration	DOT
Civil Aeronautics Board	"
Federal Railroad Administration	DOT
Federal Highway Administration	"
Urban Mass Trans. Admin.	"
Interstate Commerce Commission	"

OFFICE OF ECONOMIC REGULATORY POLICY (Cont'd)

AGENCY	Department
COMMUNICATIONS	
Federal Communications Commission	
National Telecommunications & Information Agency	DOC

AGENCIES MONITORED BY THE OFFICE OF PROCUREMENT & INNOVATION POLICY

Office Director - David Metzger 653-6533

AGENCY	DEPARTMENT
PROCUREMENT	DOD
Army Corps of Engineers	"
Defense Logistics Agency	
National Aeronautics & Space Administration	
Office of Management & Budget	
General Services Administration	
Small Business Administration	
INTERNATIONAL	
Export/Import Bank	DOC
International Trade Administration	
Overseas Private Investment Corporation	
International Communications Agency	
Agency for International Development	
Foreign Trade Zones Board	
International Trade Commission	
Foreign Agricultural Service	Agri.
GOVERNMENT PROGRAMS/COMPETITION	
U. S. Postal Service	
U. S. Postal Rate Commission	

AGENCIES MONITORED BY THE
OFFICE OF HEALTH & SAFETY POLICY

Office Director - Doris Freedman 653-6840

Agency	Department
HEALTH	
Health Care Financing Administration	HHS
Social Security Administration	"
Bureau of Indian Affairs	DOC
Federal Council on Aging	
Office of Human Development Services	HHS
SAFETY	
ENVIRONMENT	
Environmental Protection Agency	
Office of Environmental Quality	
Water & Power Resources Services	
Product/Transportation	
Consumer Product Safety Commission	
National Highway Traffic Safety Board	DOT
National Transportation Safety Board	"
Drug/Food	
Food and Drug Administration	HHS
Food & Nutrition Service	Agri.
Animal & Plant Health	Agri.
Alcohol, Tabacco & Firearms	Treas.
Drug Enforcement Agency	DOJ
LABOR	
Employment and Training Administration	DOL
Labor Management Services Administration	"

OFFICE OF HEALTH & SAFETY (cont'd)

National Labor Relations Authority	
Federal Mediation and Conciliation Service	
Federal Labor Relations Authority	
Employment Standards Administration	DOL
Occupational Safety & Health Administration	"
Occupational Safety & Health Health Review Commission	"
Mine Safety and Health Administration	"
Pension Welfare Benefit Program	"
Pension Benefit Guaranty Corporaton	"
Equal Employment Opportunity Commission	
Office of Personnel Management	
Minimum Wage Study Commission	
Federal Prevailing Rate	

AGENCIES MONITORED BY THE OFFICE OF FINANCE & TAX POLICY

Office Director - Jerry Feigen 653-7584

Agency	Department
BANKS AND SAVINGS & LOANS	
Federal Deposit Insurance Corporation	
Federal Financial Institute Examinations Council	
Comptroller of the Currency	
Federal Reserve Board	Treas.
	"
INTEREST RATES/DOMESTIC FINANCE	
Federal Home Loan Bank Board	
Federal Home Mortgage Corporation	
Federal National Mortgage Agency	
Treasury Fiscal Service	Treas.
TAXES/TAX POLICY	
Internal Revenue Service	"
CAPITAL MARKETS	
Small Business Administration (SBICs)	
SECURITIES	
Securities & Exchange Commission	
MISCELLANEOUS	
National Consumer Corporation Bank	
National Credit Union	
Farm Credit	
Commodity Future Trading Commission	Agri.

AGENCIES ASSIGNED TO OTHER ADVOCACY OFFICES *

AGENCY	DEPARTMENT
ECONOMIC DATA/STATISTICS	
Bureau of the Census	DOC
Office of Federal Statistical Policy and Standards	"
Bureau of Economic Analysis	"
Bureau of Labor Statistics	DOL
Metric Board	
BUSINESS/COMMUNITY DEVELOPMENT	
Action	
Housing & Urban Development	
Minority Business Development Agency	DOC
Economic Development Agency	"
Pennsylvania Avenue Development Corporation	
RESOURCES/PARKS/RECREATION	
Endangered Species Commission	DOI
Endangered Species Scientific Authority	"
Advisory Council on Historic Conservation	"
Heritage Conservation & Recreation Service	"
Fish and Wildlife Service	"
Geological Survey	"
Bureau of Mines	"
National Park Service	"
Navajo & Hopi	"
LAW ENFORCEMENT	
Juvenile Justice & Delinquency	DOJ
Immigration and Naturalization Service	"
Legal Services	

AGENCIES ASSIGNED TO OTHER ADVOCACY OFFICES*

MISCELLANEOUS
Federal Elections Commission
Department of Education
National Foundation on Arts & Humanities
Civil Rights Commission
Veterans Administration
Selective Service

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* Office of Economic Research
* Office of Information Association
* Veterans Affairs Group

Appendix C

AGENCY RFA OFFICIALS

AGENCY	RFA OFFICIAL AND ADDRESS	PHONE NO.
Agency for International Development	Joseph R. Ellis Office of Management and Planning Room 105 State Annex 8 Washington, D.C. 20523	202-235-2386
Agriculture, Department of	Dr. Lineley E. Juers Associate Director, Office of Budget, Planning & Evaluation Room 118-A 14th & Indendence Ave., S.W. Washington, D.C. 20250	202-447-6667
Army, Department of	Jane McIntyre Assistant Chief Counsel for Policy and Programs Office of the Chief of Engineers Washington, D.C. 20314	202-272-0028
Civil Aeronautics Board	Mark Schwimmer Asst. Chief of Rules & Legislation Division 1825 Connecticut Avenue, Room 922 Washington, D.C. 20428	202-673-5442
Commerce, Department of	Roger J. Mallet Office of Regulatory Economics & Policy 14th & Const. Ave., N.W. Washington, D.C. 20230	202-377-2153

Commodity Futures Trading Commission	John G. Gaine General Counsel 2033 K Street, N.W. Washington, D.C. 20581	202-254-9880
	Nancy E. Yanofsky 2033 K Street, N.W. Washington, D.C. 20581	
Comptroller of the Currency	Robert W. Boylan Director, Regulation Analysis 490 L'Enfant Plaza, S.W. Washington, D.C. 20219	202-447-1177
Consumer Product Safety Commission	Chuck Casper Deputy Director for Program Management 5401 Westbard Avenue, #426 Bethesda, Maryland 20267	202-492-6554
Council on Environmental Quality	Nicholas C. Yost General Counsel 722 Jackson Place, N.W. Washington, D.C. 20006	202-395-5750
Defense, Department of (Corps of Engineers)	Jane M. McIntyre Asst. Chief Counsel for Policies & Programs Office of the Chief of Engineers Washington, D.C. 20314	202-272-0028
Education, Department of	Kenneth Depew Division of Regulations Management Office of General Counsel 400 Maryland Avenue, S.W. Washington, D.C. 20202	202-245-7091

Energy, Department of	William Funk Assistant General Counsel for Petroleum Regulation 6F-094, Forrestal Building Washington, D.C. 20585	202-252-6736
Equal Employment Opportunity Commission	Karen Danart Acting Director Office of Policy Implementation 2401 E Street, N.W. Washington, D.C. 20506	202-634-7060
	Raj K. Gupta Office of Policy Implementation 2401 E Street, N.W. Washington, D.C. 20506	202-634-7060
Environmental Protection Agency	Daniel Fiorino Chief of Regulation Management Staff 401 M Street, S.W., PM-223 Washington, D.C. 20460	202-287-0781
	Peter Hansel Economic Assistance Office 401 M Street, S.W., PM-220 Washington, D.C. 20460	202-287-0736
	William Pederson Deputy General Counsel 401 M Street, S.W., A-130 Washington, D.C. 20460	
Export-Import Bank	Ross S. Delston Counsel 811 Vermont Avenue, N.W. Washington, D.C. 20571	202-566-8910
	Arthur Obester Director of Public Affairs	202-566-8812

Federal Aviation Administration	Kenneth Harris Branch Chief APO 210 800 Indiana Avenue, S.W. Room 938 Washington, D.C. 20591	202-426-3070
	Julius Ganoza Economist 800 Indiana Avenue, S.W. Room 938 Washington, D.C. 20591	202-426-3070
Federal Communications Commission	Renee Licht Office of General Counsel 1919 M Street, N.W. Washington, D.C. 20544	202-632-6990
Federal Deposit Insurance Corporation	Carol Galbraith Legal Division 550 17th Street, N.W. Washington, D.C. 20429	202-389-4422
Federal Election Commission	Susan E. Propper Office of General Counsel 1325 K Street, N.W. Washington, D.C. 20463	202-523-4175
Federal Emergency Management Agency	William L. Harding Asst. General Counsel for Legislation & Regulations 1725 Eye Street, N.W. Washington, D.C. 20472	202-634-4113
Federal Energy Regulatory Commission	Teresa Ponder Office of General Counsel 825 North Capitol Street Washington, D.C. 20426	202-357-8151
Federal Home Loan Bank Board	Rebecca H. Laird Office of General Counsel 1700 G Street, N.W. Washington, D.C. 20552	202-377-6446

Federal Maritime Commission	William J. Smith, Jr. Director, Office of Regulatory Policy and Planning 1100 L Street, N.W. Washington, D.C. 20573	[illegible]-523-57[illegible]
Federal Mine Safety & Health Review Commission	Dan R. DeLacy Chief Counsel 1730 K Street, N.W. Sixth Floor Washington, D.C. 20006	202-653-5656
Federal Reserve System	Barbara Lowrey Assistant Secretary 20th & Constitution, N.W. Washington, D.C. 20551	202-452-3742
Federal Trade Commission	Richard C. Foster Deputy Director, Bureau of Consumer Protection 6th & Penn. Avenue, N.W. Washington, D.C. 20580	202-523-3355
Food and Drug Administration	Minna Golden Small Business Coordinator 5600 Fishers Lane Rockville, Maryland 20857	301-443-5004
General Services Administration	William F. Madison Director, Small & Disadvantaged Business Utilization 18th & F Streets, N.W. Washington, D.C. 20405	202-566-1043
Health and Human Services, Department of	Bob Bergstrom Office of General Counsel 400 Independence Avenue Washington, D.C. 20201	202-245-6377
Housing and Urban Development, Department of	Bernice Williams Director Office of Small & Disadvantaged Business Utilization	202-755-1428

Department of the Interior	John D. Trezise Assistant Solicitor General Legal Services 18th & C Streets, N.W. Room 6527 Washington, D.C. 20240	202-343-5246
	Kenneth Kelly Assistant Director for Small Business Utilization Divison 18th & C Streets, N.W. Room 2624 Washington, D.C. 20240	
Interstate Commerce Commission	John C. Surina Assistant Managing Director 12th & Constitution, N.W. Washington, D.C. 20423	202-275-7444
Labor, Department of	Seth Zinman Associate Solicitor for Legislation and Legal Counsel Office of the Secretary South 2312 200 Constitution, N.W. Washington, D.C. 20210	202-523-6197
Maritime Administration	Harris L. Kane Attorney Advisor Legislation & Regulations Main Commerce Building Washington, D.C. 20230	202-377-3158
Merit Systems Protection Board	Ada Kimsey Director/Publications Division 1770 H Street, N.W., #224 Washington, D.C. 20419	202-653-7130

National Aeronautics & Space Administration	Eugene Rosen Acting Director, Office of Small and Disadvantaged Business Utilization Code K, NASA Headquarters Washington, D.C. 20546	202-755-2288
National Bureau of Standards	Allen Farrar Legal Advisor Administration Building Room A 1128 Washington, D.C. 20234	202-921-2425
National Endowment for the Arts	Stephen McCleary Office of General Counsel 806 15th Street, N.W. Room 1000 Washington, D.C. 20506	202-724-0367
National Labor Relations Board	Saul J. Jaffe Associate Solicitor 1717 Penn. Avenue, N.W. Washington, D.C. 20570	202-254-9165
National Mediation Board	Ronald M. Etters General Counsel 1425 K Street, N.W. Washington, D.C. 20572	202-523-5944
National Transportation Safety Board	Margaret C. Sweeney Legal Division 800 Independence Avenue Room 818 Washington, D.C. 20594	202-472-6033
Nuclear Regulatory Commission	Joseph M. Felton Director of Rules & Record Office of Administration 1717 H Street, N.W. Washington, D.C. 20555	202-492-7211

Occupational Safety and Health Review Commission	Dean E. Swartz Assistant General Counsel 1825 K Street, N.W. Suite 1101 Washington, D.C. 20006	202-634-4015
Office of Personnel Management	Susan D. Warshaw Office of the General Counsel Room 5H30 Post Office Box 7559 Washington, D.C. 20044	202-632-6124
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AGENCIES NOT LISTED ABOVE HAVE NOT YET APPOINTED AN RFA OFFICIAL.

Mr. SWAIN. This committee obviously does not need any sort of explanation of how important the Regulatory Flexibility Act is. This committee and Members of the House last year gave a ringing endorsement to that act. We are now some 9 months down the road on a very important statute.

The statute basically sets forth a major addition to the Administrative Procedures Act. The law itself represents the culmination of efforts that stretch back over several years and embodies the congressional interests in addressing the particular regulatory problems of small business.

Today my purpose is to report on measures that Advocacy has taken to implement Public Law 96-354. I think the Office of Advocacy has made substantial progress. My tenure in office is too brief for me to claim that all aspects of the Advocacy system respect my own inspiration or bear my complete personal endorsement.

But I can assure you—and I am quite sincere in this—the staff's efforts represent a very good faith effort by the Advocacy staff, working under the unsteady conditions of a transition. I believe they have captured the full intent of Congress to promote the best interests of small business and smaller entities.

In monitoring the act, the Office of Advocacy intends to be pragmatic. The instrument of regulatory analysis, which the act sets up, basically is a self-help mechanism, requiring the Federal regulators to think before acting, making the rulemaking process itself more open to those who are most directly affected by that process and making sure that regulations more frequently reflect rather than dictate economic situations.

The results thus far are mixed, but encouraging. As chief counsel I am not entirely pleased with the response of the Federal agencies to the Regulatory Flexibility Act so far. But I do not believe that any chief counsel should ever be entirely satisfied.

There is already a marked improvement, however. We do find it difficult to gage just how much of this overall improvement in the regulatory climate can be attributed to the Regulatory Flexibility Act as opposed to a number of the other things that are going on now, including the moratorium on regulations, the President's Executive Order 12291 and the activities of the Vice President's task force.

But it certainly appears, in our vantage point, that the Regulatory Flexibility Act is a major factor in this regard.

I think in order to address the issue of regulatory flexibility and to look at the situation of the Office of Advocacy, we have attempted to set out in the statement the context under which we are working in the Federal regulatory structure, that is, the number and type of regulations that we see every day.

All Federal regulatory actions, as you know, do not fall under the Regulatory Flexibility Act's coverage, but the Office of Advocacy has attempted to devise a system that insures that virtually every relevant rule or proposed rule, subject to the requirements of the Reg Flex Act is subjected to Advocacy's analysis.

In the prepared statement we set out a series of charts and tables which, I might add, we took some time to pull together. I think we now have more information in the statement than any one entity in the Government has about the pace of regulations.

The figures were combined from sources at OMB, Office of Federal Register, and various other Federal regulatory agencies. I think they show clearly that, except for January 1981 when some unusually high level regulatory activity occurred, there is a significant downward trend in Federal regulatory activities during the first 7 months, that is, in issuing new regulations.

While there are many possible explanations for the unusual activity for December 1980 and January 1981 when the graphs show that the level of pages in the Federal Register and the level of new Federal rules were quite high, there are several possible factors.

First, there was a transition and undoubtedly outgoing officials were anxious to complete work on their own projects that had been under preparation for some time and get them published before the new administration came in.

In addition, we feel that some agencies may have been trying to promulgate some regulations before the effective date of the Regulatory Flexibility Act.

Obviously there is no way to ever prove this, but from time to time we have an agency tell us that they do not have to pay quite as much attention to small business impact because their rule was started before January 1, 1981.

That, of course, is less and less of a problem as we get further away from that date. But I think it is evident that the agencies felt that the Reg Flex Act had at least enough teeth for them to try to avoid it.

For Advocacy, the reduced number of new Federal regulations has meant that the establishment of a monitoring system within Advocacy was made slightly easier because the regulations were coming out at a less hectic pace.

The Federal Register currently is publishing about 535 new rules per month. Later on in the testimony I will point out that a number of these rules are very specific, pragmatic, program-oriented special rules.

But measured in terms of the total number of rules, we see about a 25-percent decrease. Last year the average was about 650 rules per month. It obviously is still plenty to keep us busy.

The Office of Advocacy has devised a system to deal with monitoring responsibilities for these rules and I would like to emphasize two points about the system.

First, every reasonable effort is made to insure that all the rules covered by the actual requirements are detected and dealt with by the Office of Advocacy. Federal agencies should realize that, if they do not already.

Second, the Advocacy Office is going to attempt to concentrate its attention where the need is greatest, that is, on the agencies that generate the number and kind of regulations that affect small businesses and small entities the most.

Thus, we intend to concentrate our somewhat limited personnel and the analytical resources on those areas which are the greatest concern to small business and to small entities.

We set forth in our testimony, Mr. Chairman, a somewhat brief description of our process. It was a process that was largely in place for monitoring. It was in place when I came into the office. I think it is a process that works fairly well in most situations.

I would like to emphasize point number four on page 15. It is the followup, and although we devote three lines to it, it is most important because that is the part in which the Advocacy professional makes an experienced judgment on a particular agency, and the type of regulations that agency puts out. Advocacy staff is supposed to deal individually with the agency and use a whole range of strategies, whether it is conferences, letters, or official agency comments.

He makes sure that the agency is, in fact, complying with the act analyzing the impact the regulation has on small business and changing that regulation accordingly, if possible.

Since Advocacy has automated its monitoring system we can report that in the last 3 months we have logged in 489 regulatory flexibility items.

To give you a flavor as to how the system is working and what the reaction of the bureaucracy has been so far, of these 489 items, 412 of them were certifications, stating that a particular rule had no significant impact on a substantial number of small businesses or small entities.

Nineteen were initial regulatory flexibility analyses. We have seen 18 periodic reviews since July 1 and the remainder were items from agencies which basically claimed that for one reason or another, they were not going to have to comply with the Regulatory Flexibility Act. It was usually based on some technical legal reading of the law.

I think that ever since the act passed, the Office of Advocacy has taken our responsibilities seriously to make sure that we can respond in an informed and consistent manner.

The staff itself has a handbook to assist in gaging our responses. We have a Regulatory Flexibility Working Group that meets weekly and sometimes twice weekly, if the situation warrants, to discuss particular problems with the monitoring system or a particular knotty regulation or legal problem that we see cropping up.

We have asked distinguished legal experts to come in and help brief the staff from time to time.

Finally, I would like to comment on a point the committee asked me to remark on, and that is on guidelines.

When I assumed the position of Chief Counsel for Advocacy part of the staff had put together some proposed guidelines.

I think the best method and the best experience and judgment of my own staff is that the most effective method for encouraging an agency's active interest in the Regulatory Flexibility Act is to maintain continuous and persistent monitoring by the Office of Advocacy on an agency-by-agency basis.

I will be very candid. I did not think those proposed guidelines were appropriate to let the agencies know what we expected of them.

So, those particular guidelines have not gone out.

However, Advocacy is continuing its efforts to achieve distribution of a model IRFA while continuing to emphasize rule-by-rule monitoring.

We also are exploring some possibilities for forming briefer guidelines and sending them out to Federal agencies sometime in the not too distant future.

We have completed a directory of trade associations to assist the agencies in the specific requirement of the act that they give actual notice to small business entities and small business representatives.

We take seriously the part in the law that requires agencies to do more than publish in the Federal Register. Experience and time have shown that that is not adequate. So, we are attempting to assist the agencies to go out to other small business representative groups and trade associations for regulatory control.

The directory has not yet been distributed. The printing was held up by various budget problems. We are hopeful that when we have our appropriation completed for this current fiscal year, we will get the directory to the other agencies.

From here, my prepared statement goes into a description of 10 or 11 specific Federal agencies which you asked me to comment on.

I wish to add that I would like to submit to the committee a brief synopsis of our experience with every agency that we are presently monitoring.

The time that it took to prepare this statement did not leave time to do that, but I hope to get that to you within 2 weeks, if that is all right.

Mr. IRELAND. Very fine. We appreciate that.

Without objection, that will be placed in the record at this point.

[Statement referred to above was not received by the subcommittee.]

Mr. SWAIN. Rather than go through details on every agency, I will go through the agencies to indicate how we think their experience with the Regulatory Flexibility Act illustrates some of the points that we have learned in the last 9 months of how the law is working.

So far as the Department of Labor is concerned, I think the Department of Labor is a good example of a large Federal agency which is involved in some significant rewrites of some significant regulations that affect small businesses, specifically the Davis-Bacon Act regulations, the Service Contract Act regulations, and the regulations involving the Office of Federal Contract Compliance. That, of course, is in the job discrimination area.

The Department of Labor has submitted an initial regulatory flexibility analysis in each of those areas and on each of those regulatory rewrites.

We are not absolutely satisfied with the content of those initial regulatory flexibility analyses. We intend to comment to the Department of Labor on them. But I think the process has worked as it is supposed to, and that is, the Labor Department apparently has made a good faith effort to go in, take a look at what they are doing and how it will affect small business, and solicit public comment on the record.

That, at least, puts the Office of Advocacy and the small business community on notice that this is going on and allows them to go back to the Department of Labor in a more informed and intelligent way and suggest that there are some things the agency could do that they failed to do, or some additional things that they could do.

I think the process has worked well so far as the Department of Labor is concerned. I might add that although there have been no major changes yet in OSHA regulations, as you well know, small businesses consistently are interested in the OSHA situation. We hope that the Occupational Safety and Health Administration will be equally enthusiastic about endorsing the regulatory flexibility effort requirements if and when they make any changes in their regulations or procedures.

The Department of Transportation, I think, is an example of another large Federal agency that has had a very reduced level of issuing new regulations since January 1 of this year.

They do illustrate a particular situation that we see from time to time. The DOT has issued in the first 9 months some 140 new rules. Most of these new rules are fairly locally focused, involving airworthiness directives over particular airports and that sort of thing, and are routinely certified. We agree with those routine certifications.

The DOT has suggested that there ought to be some mechanism whereby rather than go through and certify each one of those and trigger an administrative process, that for a particular category of rules there may be some waiver or blanket certification given.

We are exploring methods to achieve that. The law does not contemplate that, per se. So what we have continued to do and unless there is an actual change in the law, is simply to take their certifications on a rule-by-rule basis.

They show a very high level of activity in terms of numbers of regulations, but the real regulation writing in terms of new regulations of the small business sector has really been quite slight. We have a good on-going relationship with the people at DOT. We expect good cooperation with them in the future.

The Department of the Interior is another agency with whom we feel we have had a good relationship. They generally have made a good faith effort to comply with the act.

In fact, the Department of the Interior specifically can be pointed to as an Agency which on its own went and formed guidelines which we think are very appropriate to Interior's functions.

They published their interim rules even before the Reg. Flex. Act went into effect on December 24, 1980. We believe the approach is very good. We recommend and endorse the approach that Interior took.

Interior has produced three initial regulatory flexibility analyses. We comment on those in the text. Generally speaking they have been quite good.

We also might add that we are pleased that Interior issued the analyses despite the fact they claim that the regulations they were changing help small business.

We have had some other agencies which are reluctant to issue analyses when they think they are helping small business because they do not think they are required under the act.

The Department of Defense is a different matter entirely. I think that to be very fair the Department of Defense does not believe that it is in violation of the act because they claim that they do not have to comply with the act.

They consistently have taken the position that the Regulatory Flexibility Act does not apply to the DOD due largely to the military function exception to section 553(A)(1) of the Administrative Procedure Act.

Almost all DOD regulatory functions are not subject to normal APA notice and comment rulemaking. Thus, the passage of the Regulatory Flexibility Act has had no discernible impact on DOD's proposed regulations with the exception of the U.S. Army Corps of Engineers.

They have appointed a regulatory flexibility officer and I believe have issued one IRFA. The advocacy staff feels we have a more positive relationship with the Corps of Engineers than we do with any other part of DOD.

Because of the broad-ranging use of the military function exception of APA, the DOD appears to have decided that outside the civilian public works functions of the Army Corps of Engineers, every regulation proposed by DOD pertains to its military functions and all regulations, therefore, are exempt from the provisions of the APA and the Regulatory Flexibility Act.

We find this attitude on the part of DOD profoundly disturbing, because by using this broad brush approach the Department of Defense has included a whole class of significant regulations which would have a definite substantial impact on a significant number of small entities.

By this we refer to DOD's procurement regulations and the impact of those regulations on small business and other small entity contractors in terms of DOD procurement.

DOD claims apparently that procurement is exempt from the Regulatory Flexibility Act. However, we have pointed out to them that the Regulatory Flexibility Act not only applies to regulations published pursuant to the APA, but pursuant to other laws as well.

The other law regarding procurement regulations is Public Law 93-400 and its amendment in Public Law 96-83 which is the enabling legislation for the Office of Federal Procurement Policy.

This statute specifically states that the function of the OFPP Administrator includes establishing criteria and procedures for an effective and timely method of soliciting of viewpoints of interested parties and the development of procurement policies, regulations, procedures, and forms.

All procurement regulations are subject to this type of notice and current rulemaking and, therefore, we believe that DOD's procurement regulations are not exempt from the Regulatory Flexibility Act.

We recommend to the committee that if you are interested in what we would regard as a troublesome area of the law or an area where there obviously is disagreement about the applicability of the law, that you look into this area.

In general, we can say the same thing for the IRS. The IRS in the same sense issues a lot of regulations. It obviously takes a lot of actions that impact on small business.

They do it in a form which they claim does not bring them under the Regulatory Flexibility Act.

In a couple of cases, where the IRS is making a major change in policy, it is proceeding pursuant to what is called notice and comment rulemaking. This is the situation with regulations that were issued pursuant to the Windfall Profit Tax Act, which was passed last year, and pursuant to some changes in the LIFO inventory area. Of course, we certainly applaud their approach in these cases.

However, the lion's share of IRS activity comes under what they call interpretative rulemaking on a case-by-case basis. They argue that this interpretative rulemaking does not come under the structure of the Regulatory Flexibility Act, and therefore they do not have to do various small business analyses. The fact remains that the IRS procedures, whether they are interpretative or whether they are general, have a big impact on small business. We would like to have a better handle on them.

I would like to briefly comment on the FDA. I think the FDA is an example of a fairly small agency in terms of public prominence which potentially has some tremendous impacts on small businesses in particular issues.

They have had a fairly good record in the past of trying to get in touch with the small business community and listening to the community on the issues that the Agency was dealing with.

They have been a little bit slow to pick up on the system that the Regulatory Flexibility Act required.

The FDA has performed one IRFA. Although it contains some information, the FDA is pleading that since the regulation they were changing was helping small business, they did not really have to do anything.

That, of course, is not our point of view. We have suggested in oral and written remarks that we hope they can provide us some analysis, even when the regulation they propose to change helps small business.

Without that analysis, even if it helps small business, we do not know enough to say whether the FDA might help them more if the FDA would just go a little bit further.

So, we believe that although the spirit is good at the FDA, they do not really realize why the law was put into effect. The Regulatory Flexibility Act requires agencies not only to help small businesses but also to avoid burdening small businesses with their regulations.

The Environmental Protection Agency, despite a reputation for putting out a lot of regulations, has not really done much this year so far. They have only issued one IRFA involving a fairly narrow issue area.

The EPA has a pretty good reputation in the past for some innovative regulation writing in the sense that they really are trying to look at different types of solutions to some of their regulatory functions.

We expect that we will have pretty good cooperation from them.

I might add that one of the EPA's economic analyses that they did last year before the Reg. Flex. Act took effect on the lead battery acid issue, my office considers somewhat a model in the area.

So, we do expect that we will have cooperation from EPA in the future.

The SEC is another good example of an agency, I think, where the act has performed its function quite well. I am not sure that you would get people at the SEC to tell you that they are making the changes that they are making because of the Regulatory Flexibility Act.

But whatever their rationale is, we think that they are doing a reasonably decent job for small business at this point.

They have put out an analyses and again the analyses and the agenda, I think, serve the proper function. They put everybody on notice, not only the SBA and the Office of Advocacy, but the small business community, that the SEC is doing certain things which have a significant impact on small business.

In some of those items we believe the SEC can do more and we, in fact, are commenting on these issues. When the Office of Advocacy took a look at what the SEC, in its agenda, said it would be doing, we were able to plan and research the issues that they would be looking at.

In fact, we are now in a position to go back and comment pretty explicitly on what they are doing. So generally I think the SEC is an example where the law has worked well. We hope it will work better.

It is also an interesting example because I think the reputation of the SEC around town is of a highly independent agency which does not like to have its process tinkered with in any way, shape, or form.

We are glad that we have been able to work with them we think to the ultimate benefit of the small business community.

The Interstate Commerce Commission is an example of an agency where we really had to push, prod, and shove. They went through several sorts of levels of interest in the Regulatory Flexibility Act before we finally feel that they have got religion on the Regulatory Flexibility Act.

Obviously the ICC went through a transition like a lot of other Federal agencies, and there was perhaps some reluctance to make some firm decisions during that transition.

At any rate, we do have the public commitment of Chairman Reese Taylor to comply with the Regulatory Flexibility Act and to make a good analysis of the way their actions impact on small business and to minimize those impacts, if possible. We are confident that the ICC will produce some good results for small business so far as transportation regulation is concerned. The record is really still very open in that regard and we will be interested in watching the record of the ICC.

Finally, the Federal Trade Commission is another example of an agency that has had a highly reduced level of Federal regulatory activity in the past 9 months. With a new chairman sworn in this week, James Miller, we expect that not an increase in the level of regulations, but an increased emphasis on the Regulatory Flexibility Act will occur.

I have spoken with Mr. Miller several times concerning small business and the act. He was well acquainted with the act and the importance of being mindful of what the Federal Government does and how it affects small business.

So, we are hopeful and optimistic for good cooperation with the FTC regarding their responsibilities under the Regulatory Flexibility Act.

Finally, I wish to comment on the Federal Communications Commission, which I think is an interesting example of a number of issues that have arisen regarding the Reg. Flex. Act.

The FCC, as you know, regulates in a fairly technical area which I certainly do not purport to understand. There probably are only a few people around who really can get in and wade around in some of the issues that they like to get involved in.

However, many of those issues have some very important impacts on small business, even though we often do not understand what they are talking about when they publish it in the Federal Register.

Advocacy's experience with the FCC illustrates the importance of the active involvement of the small business community. Our experience with the FCC has been that when some regulations come out, we frankly are not sure what they mean one way or the other. In order to remedy this knowledge gap, we can call interested small business trade groups or they can come to us and let us know what they think their problems are regarding communication regulation.

I think the FCC also is an example of an agency where part of the agency is very interested with complying with the act and other parts of the agency have not quite come along so far. We hope that consistent leadership by the Commission and consistent interest in the act will make what we regard as a fair situation in terms of compliance even better.

A third important factor regarding the FCC is that a lot of what they are doing these days comes under the banner of deregulation.

Again, I would like to emphasize that the Office of Advocacy takes the position that even if you call it deregulation, that means that you have to take a look at how it is impacting on small business.

The FCC, after some initial backing and filling, now agrees with us on that and has performed a couple of pretty good initial regulatory flexibility analyses.

Finally, I would like to emphasize that we think the Reg. Flex. Act is having a genuine impact on the FCC, I believe this is significant because when we are looking at regulatory reform and executive orders and all this, the fact remains that the only statute on the books that has application to every Federal rulemaking agency is the Regulatory Flexibility Act.

Executive Order 12291 does not get to the FCC. They may have volunteered—I cannot recall—to comply with it, but no President can order the FCC or any of the other independent commissions to do exactly what he wants to under the usual reading of constitutional law.

So, therefore, if Congress wants to affect the way that regulations are put out by independent agencies, you really have to pass a law to do it. The Regulatory Flexibility Act clearly applies to regulations whether they are written by executive agencies or by independent agencies.

The FCC realizes this. We think they have come a long way in terms of compliance. We hope the decisions they make on behalf of small business will be better than they have been.

Finally, I would like to point out the attitude that our office will take in terms of regulatory flexibility.

The Office of Advocacy has learned not to expect that every Federal department or agency will be equally inclined to comply with this statute.

As the preceding agency descriptions show, most major agencies that deal with small businesses profess to have an active interest in complying with the act.

But looking beyond the tangible record of public statements and certifications, it is clear that there are highly variable levels of enthusiasm among and within agencies for worrying about how their actions may have a significant economic impact on a substantial number of small entities.

The role of the Office of Advocacy is crucial in this process. The Reg. Flex. Act invests the Office of Advocacy with the function of pushing along the Federal agencies toward the greater awareness of how their actions impact small entities.

The Office of Advocacy will continue to monitor, advise, compliment, and criticize agencies for their performance under the Reg. Flex. Act.

Even if the pace of the new Federal regulations continues at its current lowered level, the agencies will be tested by their progress on their agendas.

Congress correctly recognized that existing regulations represent a very large share of the problem. Advocacy will be particularly interested in the progress agencies make on the agendas.

I believe that the Regulatory Flexibility Act strikes the correct balance institutionally between the Office of Advocacy and other parts of the Government.

I might add that our relationship with the Office of Management and Budget has been, on the whole, quite cooperative and mutually productive.

However, OMB has a very broad management role and does not necessarily have to be particularly concerned about small business. That is the special function of the Office of Advocacy and it represents a unique opportunity for the small business community to have a committed and effective voice in regulatory management.

Other Federal agencies should realize that the definition of their relationship with the Office of Advocacy is basically in their own hands. It can either be adversarial or cooperative. I hope in all cases it will be cooperative.

However, as we all get more experience dealing with the requirements of the Regulatory Flexibility Act, that cooperation should be measured less in terms of certifications and analyses and more in terms of actual regulatory change which will diminish the economic burdens on small business and other small entities.

I regard this report as only a preliminary look at the Regulatory Flexibility Act. I look forward to the continued interest of this committee and the progress with the Office of Advocacy and the Federal regulatory agencies in dealing with the Reg. Flex. Act.

The regulatory environment has many large and strong constituencies. The active interest of this Congress and this committee and the small business community is necessary to insure that the Reg. Flex. Act has an opportunity to work.

Thank you, Mr. Chairman. I would be happy to respond to questions.

Mr. IRELAND. Thank you.

I think I would be remiss if I did not tell you that I wrote a note to myself after you two gentlemen finished your testimony. I wrote: "I guess the SBA has finally arisen from the ashes." I do not think there is anything in my 5 years in Congress associated with the small business area that has been as gratifying as hearing the cooperation that is going on between the two elements of the SBA, Mr. Cardenas' activity, and yours in the Advocacy.

I am even delighted that we can now compete with some of the other agencies, having been used to hearing the Environmental Protection Agency talk about their RPAR's, how at least we have our IRFA's.

You cannot beat a deal like that.

I want you to know that I am impressed with what you have done. I am sure that in carrying out your mission there is a tendency to do it as the frustration level arises in an adversarial way. You have stayed away from that judging from what you have said and from what I have heard. There is a difference between advocacy and hostility. I think you have done very well along that line.

In the wide, wide world of funding and staffing, what kind of problems do you have along that line, if any?

Mr. SWAIN. I do not want to sound like the Federal typical bureaucrat and say that I never have enough. Now we are fairly staffed up to our budget limit. Of course, it is difficult to predict what that budget limit is going to be for fiscal year 1982 because the appropriation has not finally been approved.

I think the level of what we are doing now is really the bare minimum. There are a lot of areas that we ought to be getting into, but substantively and procedurally we have not been able to get into yet.

I really do not see an ability to do that unless we have a slight expansion in terms of our personnel resources and our ability to respond to the other agency's other actions.

So, although I will not cry about the situation that our budget is in now, it is really rock bottom bare minimum. Our ability to respond for small business to these Federal actions, I think, will be sorely tested as these agencies get into gear and as they start a higher level of Federal regulatory activity than we have seen in the past 9 months.

Mr. IRELAND. You mentioned automating your monitoring system. Can this be part of the answer to the staffing question?

Mr. SWAIN. The monitoring system is a mechanical diary. When the Federal Register comes in, it is cut up and sent out to a number of the other advocacy professionals.

We then can keep track of what has come in and when it came in and who it affects and what the subject matter is. This has gone onto a computer in terms of software, but as I suggested in my statement, the really important part is not the cutting up. Of course, that has to be done.

But the really important part is that once it gets to an Advocacy professional, that person's professional judgment on what ought to be done and whether the agency has complied or not comes into play.

No computer really has that sort of judgment to detect whether an agency has complied or not complied. What we really need is staff to make those judgments.

Generally we have a very good staff now and I wish we could have a few more.

Mr. IRELAND. Mr. Weber?

Mr. WEBER of Ohio. You made an excellent statement, Mr. Swain. I am confused because the act is new to me.

Are you mandated? Are you given some charge under the act, the duties and responsibilities?

Mr. SWAIN. Yes, sir. The Office of Advocacy itself is a fairly recent office. It was created in 1976 pursuant to a public law that the Congress passed that year.

In 1980 the Office of Advocacy was given, pursuant to this act, a specific function of monitoring the compliance of Federal agencies of the Regulatory Flexibility Act.

I believe this was done because it was felt that the Regulatory Flexibility Act, focusing as it does on the regulatory problems of small business, could best be judged as to whether it was working or not if somebody that had some interest and expertise in small business was taking a look at it.

Mr. WEBER of Ohio. Do you have any enforcement powers in connection with that monitoring?

Mr. SWAIN. Our powers are mostly ones of admonishment. Unlike the NEPA statutes, we cannot stop a regulation cold if they have not done something.

The most we can do really is finger point and create a ruckus and come up and complain to you and do a lot of things that will put the heat on the agencies.

Mr. WEBER of Ohio. Do you file reports regularly with this committee?

Mr. SWAIN. This is my first report.

I should add that we do have the power to appear in a regulatory proceeding as an amicus curiae, that is, a friend of the court, to advise them on our point of view.

But in terms of actually running into court and stopping things cold, that really has not been litigated yet. I could not answer finally on that.

Mr. WEBER of Ohio. If the regulation is adopted without complying with the Reg. Flex. Act, is not the regulation subject to court challenge?

Mr. SWAIN. Yes; we take the position that it is. That is a terribly complicated legal question, but I would take the position that if agencies do not comply with the Reg. Flex. Act that the regulation is thereby arbitrary and capricious and is deserving of judicial challenge.

Mr. WEBER of Ohio. What do you feel is the most helpful way that you can render assistance to the other agencies?

Mr. SWAIN. I feel the most helpful way we can render assistance is by giving agencies consistent and pragmatic advice as to what they are doing on an issue-by-issue basis.

The realm of Federal regulatory problems that we see coming into the office is so broad that it is difficult to generalize on that.

Our help to the other agencies basically is to set an attitude that we expect compliance and to help them try to achieve that.

Obviously at some point along the line when the law ceases to become new, we are going to be looking more at results and less at process.

Mr. **Weber** of Ohio. Thank you.

Mr. **Ireland**. Mr. Dreier?

Mr. **Dreier**. Thank you. Let me ask this. What would you say is the principal complaint which has come from the agencies about the act?

Mr. **Swain**. I am not sure there has been any principal complaint. There have been complaints from several agencies in the form of general apprehension about the law. They are getting into an area they have not dealt with very much before. They have not been forced before to look at small businesses. They wonder how to do it.

Something I am starting to hear more now is that they need more information in terms of how to go about assessing numbers, impacts, and so on. The question that was directed earlier to Mr. Cardenas regarding the data base perhaps is one way of getting at that.

I would basically say that a principal complaint has been that they do not have the numbers to assess what their impacts are in small business and, therefore, how can they comply with the law if they cannot count up the impact on small business.

We will try to remedy that in the near future.

I can cite several examples where we have been able to go back to specific agencies and suggest that a definition that they are attempting to use is either good, bad, or indifferent, using information we have given them.

The EPA, the FTC, the CAB, have all called us and asked us to make computer runs on our data base, bringing out certain types of data for them. We have been able to do that.

Our problem with the data base is this. I found there was a great mass of data down there, but nobody knew that we had it and nobody knows how to use it. It is all trapped in some big computer. So that is what we are trying to do—get some word out to the agencies on how they can tap that.

Mr. **Dreier**. We are about to make an historical vote on the floor, Mr. Chairman, so I think we will have to go.

Mr. **Ireland**. Let me compliment you again. I am sure we all perhaps will have a question or two, particularly as we hear from other agencies that we will want to send to you for the record.

Mr. **Swain**. Yes; we will be glad to do that.

Mr. **Ireland**. We appreciate your being here today.

The subcommittee is adjourned.

[Whereupon, at 10:10 a.m., the subcommittee adjourned to reconvene subject to call of the Chair.]

OVERSIGHT OF REGULATORY FLEXIBILITY ACT
(Part 1)

TUESDAY, OCTOBER 20, 1981

House of Representatives,
Subcommittee on Export Opportunities and
Special Small Business Problems,
Committee on Small Business,
Washington, D.C.

The subcommittee met, pursuant to notice, at 9:30 a.m., in room 2359-A, Rayburn House Office Building, Hon. Andy Ireland (chairman of the subcommittee) presiding.

OPENING STATEMENT OF CHAIRMAN IRELAND

Mr. **Ireland**. Good morning, everybody.

Today the subcommittee continues its hearings on the implementation of the Regulatory Flexibility Act. We are pleased to have with us the representatives of three Federal agencies. Last week we received an excellent detailed report from representatives of the Small Business Administration.

We will lead off with the Securities and Exchange Commission. Commissioner Bevis Longstreth, if you will step forward, please, sir.

TESTIMONY OF BEVIS LONGSTRETH, COMMISSIONER, SECURITIES AND EXCHANGE COMMISSION; ACCOMPANIED BY ALAN ROSENBLAT, OFFICE OF THE GENERAL COUNSEL, AND PAUL BELVIN, OFFICE OF SMALL BUSINESS POLICY, DIVISION OF CORPORATION FINANCE, SEC

Mr. **Longstreth**. Mr. Chairman, with your permission, I will abbreviate my remarks, but ask that the full statement be put in the record.

Mr. **Ireland**. Mr. Longstreth, if I could, and for reasons I will enunciate later, I would prefer without reading the additions to it that you go through the entire statement.

Mr. **Longstreth**. I am pleased to appear here today on behalf of the Securities and Exchange Commission to present an account of our experience and progress to date in implementing the Regulatory Flexibility Act, which I will refer to as the RFA. During the course of this testimony, I will be responding to the specific questions contained in Chairman Ireland's letter of October 8, 1981, to Chairman John Shad of the Commission. Copies of those materials which chairman Ireland requested in connection with this hearing are attached to my prepared statement.

The Commission believes that it is in full compliance with the RFA and has taken great care to assure that all rulemaking initiatives are reviewed thoroughly for any effect they may have on small business. The Commission has designated its Director of Economic and Policy Analysis as the official responsible for coordinating compliance with the RFA's technical requirements, primarily by assisting the operating divisions in the preparation of RFA analyses. The Director also is responsible for compiling the regulatory agendas and review plans and serves as liaison with the Office of Advocacy of the Small Business Administration. The Commission's Office of the General Counsel is primarily responsible for assuring compliance with the legal requirements of the RFA.

In my statement today, I would like to give an overview of the effects that the RFA has had on the rulemaking activities of the Commission, and a brief statement of our views on the broader question of how well the RFA has served the purpose of drawing the Commission's attention to the needs of small business. In recent years, even before the passage of the RFA in 1980, we have been extremely sensitive to the problems of small business and have taken substantial steps to reduce burdens. The RFA has caused us to focus in limited areas more closely on the burdens which proposed rules would impose on some of the small entities subject to our jurisdiction. But, on balance, the Regulatory Flexibility Act has added little of value to our processes, while at the same time imposing substantial internal burdens. As a result, the RFA itself simply has not been cost effective in our view.

I would like to emphasize at the outset that the Commission's concern with the problems faced by small businesses in attempting to comply with the Federal securities laws predated the enactment of the RFA. In fact, during both House and Senate consideration of this legislation, the Commission was cited as one of the agencies that was actively pursuing a deregulatory approach with respect to small business. We have continued to follow that course, and, as I will explain in greater detail later, we have adopted and are currently pursuing a number of rulemaking initiatives to ease the regulatory burdens on small business.

As you know, the RFA added a number of procedural steps to the rulemaking process, including the preparation of rulemaking agendas, periodic review of rules, and preparation of initial and final RFA analyses for rules that have or are expected to have a significant economic impact on a substantial number of small entities. The RFA requires a full analysis of a rulemaking proposal even if the impact on small business, though significant, will clearly be deregulatory and favorable. Now, at the end of the testimony, I have a suggestion about that problem, a suggestion for a change that would ease the burden somewhat. Further, although agencies are required to follow the foregoing procedures only for rules that meet the RFA impact test, the act imposes additional burdens because every agency rulemaking initiative, with the narrow exception of procedural rules for which no public comment is solicited, must be subjected to careful scrutiny to determine whether the RFA is applicable.

Preparation of RFA analyses may be waived only if the agency head personally certifies that the rule or proposed rule does not meet the RFA impact test. At the Commission we take this responsibility seriously, requiring the heads of the various staff units to provide adequate reasons to support every decision to certify that a rule will not have, in the words of the statute, a "significant economic impact on a substantial number of small entities." Accordingly, every rulemaking initiative must be examined according to RFA standards, whether or not the results of that examination are ever published in the form of an RFA analysis. The examination of all rule proposals for certification purposes, and the preparation of supporting materials justifying such certifications where appropriate, has required a significant amount of staff time, including the time of senior staff officials and the Commissioners.

The burden of examining all rule proposals is increased because of the vagueness of some of the language in the RFA. The most notable example is the term "significant economic impact," a key element in the test for determining whether an RFA analysis is required. Unfortunately, that term is undefined, so that the burden is on the agencies to judge what degree of impact is significant.

In addition to the certification process, the matter of defining "small entities" for purposes of Commission rulemaking has required a large expenditure of staff time. As you know, section 601(3) of the RFA defines small business by reference to section 3 of the Small Business Act, which in turn refers to size standards promulgated by the Small Business Administration, which I will refer to as the SBA. However, the RFA allows agencies to establish definitions more appropriate to their activities, after consultation with the SBA and an opportunity for public comment. Agencies may also adopt their own definitions of "small organization" and "small governmental jurisdiction" after an opportunity for public comment.

We found the SBA definitions inappropriate, in large part because they were written for purposes unrelated to the Federal securities laws. Accordingly, on March 20, 1981, the Commission proposed definitions of the terms small business and small organization as those terms will be used in connection with rulemaking under the statutes administered by the Commission. We expect to adopt final definitions in the near future.

I might note that the release setting forth the proposed regulations was 57 pages long. We had to cover six statutes and we had more than 10 definitions. This was not an exercise of trying to produce paper but rather of trying to comply with the act and make these definitions work with respect to the laws we administer.

It should be pointed out, however, that the difficulty of this definitional exercise is compounded in many respects by our lack of relevant detailed information about the entities subject to the Commission's jurisdiction. The Commission traditionally has strived to minimize reporting burdens on regulated entities and to collect only financial and other information about a company's business that is necessary for the protection of investors and fulfillment of the other purposes of the securities laws. As a result, in some areas the Commission lacks the detailed information about employment, number and size of accounts, and other features of businesses within its jurisdiction that would enable it to set precise size limits. It is paradoxical that, in order to obtain accurate data for this purpose, the Commission would have to increase reporting burdens, particularly on small businesses. We have attempted to avoid that route by expending extra staff time in developing intelligent estimates from the available data.

We have roughly estimated the amount of professional staff time already spent on RFA matters as 3 staff-years. This estimate includes time spent in getting ready for the act when it went into effect in October. Approximately 12 additional staff-years will be expended over the next several years. But the act cannot be considered in isolation; its burdens are cumulative. The resources we have devoted to the act are in addition to time spent in administering a number of other statutes not related to the securities laws, such as the Freedom of Information Act, the Privacy Act, the Government in the Sunshine Act, the Right to Financial Privacy Act, the Paperwork Reduction Act, and the Equal Access to Justice Act—which first came on stream in October—among others. We have estimated that at least 10 percent of the total staff resources at the Commission's headquarters office are devoted to matters arising under Federal legislation which affect the administrative process, rather than matters arising under the Federal securities laws.

For some time we have been concerned about the proliferation and unintended adverse effects of some of the administrative and regulatory reform legislation that has been enacted during the past decade. Although these statutes have admirable purposes, we believe that they have resulted in greater costs and burdens for Government agencies, without concomitant benefits to the public. Their cumulative effect in impeding efficient and effective administration of the substantive statutory mandates of agencies is much greater than has been recognized. To some extent I think that these laws stem from a certain distrust of the agencies.

Mr. **Ireland**. That is probably well founded.

Mr. **Longstreth**. As described above, the RFA has imposed a large burden on our staff, which diverts staff effort away from our primary duties to administer the Federal securities laws. One must ask whether that burden has been justified—in other words, whether the burden has made the Commission more sensitive to the needs of small business than it would be absent the RFA, and if so whether that heightened sensitivity has made a difference to small business adequate to justify burden and cost. On the whole, we find that the RFA has slowed down, rather than promoted, the Commission's efforts to scale its regulations to the size of affected entities. In our judgment, deregulation can be accomplished better by an efficient agency under capable leadership than by imposition of procedural burdens on the regulatory process itself.

The Federal securities laws apply to many small entities, for example, small companies seeking to raise capital, small broker-dealers, and small investment advisers. As I have mentioned, we have been sensitive to the need to remove unnecessary burdens on small business caused by our regulations. As part of our program in furtherance of this goal, in June 1979, over 1 year prior to the enactment of the RFA, the Commission established the Office of Small Business Policy. This followed public hearings held by the Commission in April and May 1978, regarding the effects of its rules and regulations on the ability of small business to raise capital and the impact on small business of the disclosure requirements under the securities laws. The mandate of the Office is to review and comment upon the impact of various Commission rule proposals on smaller issuers, to coordinate the Commission's small business rulemaking and legislative initiatives, and to serve as a liaison with congressional committees, Government agencies, and other groups concerned with small business.

In furtherance of these mandates the Small Business Office has, among other things, initiated several significant projects designed to address and alleviate, to the degree consistent with the public interest and the protection of investors, the problems confronted by small business in raising capital. The adopted actions have included: form S-18, a simplified registration statement with streamlined disclosure requirements promulgated for the benefit of small issuers; rule 242, a small business limited offering exemption designed to provide such issuers with greater flexibility in raising capital without facing the uncertainty and the more burdensome requirements associated with other exemptions; and regulation A, which was revised in order to codify disclosure standards applicable to such offerings, thereby reducing the costs to issuers in preparing such filings.

The proposed initiatives include regulation D, which, if promulgated, would provide a series of six new rules designed to coordinate the various limited offering exemptions, to streamline existing requirements, and to serve as a basis for a uniform State-Federal exemption in order to provide a more coherent pattern of exemptive relief, particularly as it relates to the capital formation needs of small business. In addition, the Commission is considering a system of classification of small issuers which, if effected, would exempt a class of smaller issuers from the registration and reporting provisions of the Securities Exchange Act of 1934. The classification question was the subject of a concept release published in June 1980, and today the Commission is considering a specific rule proposal to implement this concept.

The Office of Small Business Policy could thus be viewed as performing the regulatory flexibility function for the many rules, regulations, and forms administered by the Division of Corporation Finance. However, due to the nature of its rulemaking proposals, that Office has been required to draft a number of regulatory flexibility analyses. Consequently, the Office has found that the procedures required by the RFA have had the unintended result of impeding the expeditious implementation of a range of initiatives designed to benefit smaller issuers.

The Commission will continue to study ways of tiering its regulations according to the size of regulated entities. Nevertheless, we have found that the additional paperwork burdens of the RFA place procedural hurdles in the Commission's path that serve no substantive purpose. As a practical matter, the required drafting of extra documents, whether they be RFA analyses or memorandums justifying certification that such analyses are unnecessary, requires extra staff time in preparing proposals for the Commission's consideration. Accordingly, the Commission cannot act as quickly as it might in approving measures designed to reduce regulation. In addition, the requirement that the staff follow elaborate procedures merely to demonstrate the consideration given to small business does not enhance the staff's work.

We do not believe that the RFA is really cost effective in inducing regulators to consider the impact of their actions on small entities and modify them where necessary. Responsible regulators considered the effect of their actions on all regulated entities—large and small—before passage of the RFA and presumably will continue to do so. After its passage, on the other hand, regulators who were insensitive to the impact of their actions on small business before passage of the RFA may not have their attitudes changed by the requirement of an RFA analysis, if they have determined to follow a particular course of action.

In the context of deregulatory initiatives, it seems that an exception could be added to the act with respect to the preparation of regulatory analyses. I believe that such an exception would be warranted for very practical reasons. When an agency engages in rulemaking that reduces or eliminates burdens it is, in fact, considering the costs of regulation and how to reduce those costs without jeopardizing fundamental regulatory goals and purposes. In that context, the specific procedures mandated by the act do not seem cost justified. It is, of course, important to assess the effects of all regulation and regulatory changes on small business, but it does not seem that statutorily mandated procedures are necessary when an agency is engaged in deregulatory rulemaking. Our approach to implementing this point would be to amend the statute to make clear that the substantial economic impact must be a negative one; that is, compliance with the RFA would be required only if the effect of the rule would be to impose new or increased costs.

I would be happy to try to answer any questions you may have about the Commission's implementation of the RFA. Depending on the nature of your questions, however, I may request your permission to respond or supplement my response in writing.

[Attachment to Mr. Longstreth's testimony follows:]

SECURITIES AND EXCHANGE COMMISSION

17 CFR Ch. II

[Release No. 33-6312, 34-17738, 35-22015, 39-627, IC-11738 and IA-758; File No. S7-883]

Regulatory Flexibility Agenda for Purposes of the Regulatory Flexibility Act

AGENCY: Securities and Exchange Commission.

ACTION: Publication of regulatory flexibility agenda for purposes of the regulatory flexibility act.

SUMMARY: The Securities and Exchange Commission is today publishing a regulatory flexibility agenda, pursuant to Chapter Six of the Administrative Procedure Act. The agenda is intended to provide advance notice of certain rulemaking actions anticipated during the next six months. The Commission is seeking public comment on subject areas and particular items of the agenda.

DATE: Comments are due by June 30, 1981.

ADDRESSES: Persons wishing to submit written views should file four copies thereof with George A Fitzsimmons, Secretary, Securities and Exchange Commission, Room 892, 500 North Capitol Street, Washington, D.C. 20549. All submissions should refer to File No. S7-883 and will be available for public inspection at the Commission's Public Reference Section, Room 6101, 1100 L Street, N.W., Washington, D.C. 20549.

FOR FURTHER INFORMATION CONTACT: Jeffry L. Davis, Acting Director, Directorate of Economic and Policy Analysis, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549. Additional names of persons to contact with regard to specific agenda items are listed at the end of such items.

SUPPLEMENTARY INFORMATION: The Regulatory Flexibility Act (Pub. L. No. 96–354, 94 Stat. 1164 (September 19, 1980)) ("RFA") added a new Chapter Six to the Administrative Procedure Act (5 U.S.C. 601 *et seq.*). Among other things, the RFA requires that the Commission, during October and April of each year, publish in the **Federal Register** a regulatory flexibility agenda containing (i) a brief description of the subject area of any rule which the agency expects to propose or promulgate which is likely to have a significant economic impact on a substantial number of small entities;[1] (ii) a summary of the nature of any such rule, the objectives and legal basis for the issuance of the rule and an approximate schedule for completing action on any such rule for which a general notice of proposed rulemaking has been issued;[2] and (iii) the name and telephone number of an agency official knowledgeable concerning the rule.[3]

In a separate action, the Commission has proposed to define the terms "small business" and "small organization" for purposes of the RFA as those terms may apply to entities that are issuers of securities or otherwise engaged in securities or other business activities subject to disclosure and reporting requirements or regulation by the Commission pursuant to the Securities Act of 1933, 15 U.S.C. 77a *et seq.* ("Securities Act"), the Securities Exchange Act of 1934, 15 U.S.C. 78a *et seq.* ("Exchange Act"), the Public Utility Holding Company Act of 1935, 15 U.S.C. 79a *et seq.* ("Holding Company Act"), the Trust Indenture Act of 1939, 15 U.S.C. 77aaa *et seq.* ("Trust Indenture Act"), the Investment Company Act of 1940, 15 U.S.C. 80a *et seq.* ("Investment Company Act"), or the Investment Advisers Act of 1940, 15 U.S.C. 80b-1 *et seq.* ("Advisers Act").[4]

The agenda in this release relies on the proposed definitions of the terms "small business" and "small organization" contained in that prior release, as those terms may relate to various entities subject to the Commission's rules and regulations. If the definitions which are later adopted by the Commission differ substantially from those proposed, the Commission will give consideration to publishing a revised agenda.

I. Regulatory Flexibility Agenda

As provided by the RFA, the publication of the Commission's regulatory flexibility agenda does not preclude it from considering or acting on any matter not included therein, nor is the Commission required to consider or act on any matter which is included therein.[5] Furthermore, the inclusion of a rule in the Commission's regulatory flexibility agenda reflects only the staff's preliminary judgment that such rule, if promulgated, may have a significant economic impact on a substantial number of small entities. This preliminary judgment, of course, is subject to change upon further development and analysis. In this regard, the staff has some doubts about whether some of the anticipated rules would have any such economic impact, if promulgated, but such rules have been included in the agenda in order to maximize the opportunity for public comment.

The following agenda lists the particular rules which the Commission expects to consider for proposal or promulgation during the next six months, which, if promulgated, may have a significant econmic impact on a substanial number of small entities.

A. Disclosure Rules

1. Amendments to Regulation A

On December 23, 1980, the Commission proposed a comprehensive revision and reformatting of Schedule I of Regulation A under the Securities Act so that the item requirements of the Schedule will reflect current Commission disclosure policies.[6] The proposals have their legal basis in the Commission's rulemaking authority under Section 19(a) and its authority to exempt securities from registration under Section 3(b) of the Securities Act. Regulation A is a conditional exemption pursuant to Section 3(b) that may be used by a variety of issuers for public offerings not in excess of $1.5 million in any 12-month period. A notification and offering circular with the information prescribed by Schedule I must be filed with the Commission's regional office in the region in which the company's principal business activities are conducted. The proposals are designed to codify disclosure standards which are currently being applied to Regulation A offerings and to provide specific disclosure requirements for different types of issuers and different types of offerings. To this end the proposed structure of the revised Schedule I contemplates the establishement of a "pool" of disclosure items which range from basic items common to all transactions to specialized items germane to a particular issuer or transaction. The Commission expects to consider the adoption of a final rule during Summer 1981. Agency contact: Daniel Abdun-Nabi, Office of Small Business Policy, Division of Corporation Finance, (202 272-044.

2. Classification of Issuers Under the Exchange Act

On June 2, 1980, the Commission published an advance notice of proposed rulemaking to solicit comment on the advisability of establishing, pursuant to its rulemaking authority under Section 23(a) of the Exchange Act, certain defined classes of smaller issuers for purposes of reducing or modifying the registration, reporting and other requirements under Section 12 and Section 15(d) of the Exchange Act.[7] Currently, issuers that are required to file periodic reports with the Commission, whether by reason of their registration under Section 12 or pursuant to Section 15(d) of the Exchange Act, are now required to provide essentially the same type and quality of information regardless of their size. Many commentators have noted that the cost of compliance with the periodic reporting requirements is not only substantial in absolute amounts but is relatively greater for smaller companies than for larger issuers. A classification system for certain defined classes of smaller issuers, as currently being considered by the Commission, could modify the nature or frequency, or both, of reports that are, at present, required to be filed. The purpose of such a system would be to reduce the compliance burdens imposed by the reporting requirements of the Exchange Act which are disproportionately higher for smaller issuers. The Commission expects to consider a specific proposal for classifying issuers in Summer 1981. Agency contact: Paula L. Chester, Office of Small Business Policy, Division of Corporation Finance, (202) 272-2644.

3. Examination of Exemptions From the Registration Provisions of the Securities Act

On December 23, 1980 the Commission issued a release soliciting the written views of interested members of the public on a number of issues prompted by the enactment of the Small Business Investment Incentive Act of 1980 [Pub. L. No. 96-477 (Octoeber 21, 1980)].[8] The principal purpose of the release was to focus on questions raised as a result of the enactment of the Section 4(6) exemption and the increase in the limit of Section 3(b) to $5,000,000. However, commentators were encouraged to provide their views on the broader question of whether the various exemptions under the Securities Act provide a coherent scheme for relieving issuers of the burdens of the full scale registration, and, if not, what steps the Commission should take to make the scheme more coherent. The exemptions to be examined include existing Rules 240, 242, 257, Regulation A and Rule 146, along with the newly created Section 4(6) exemption. The first set of issues the Commission requested commentators to focus on related to the interrelationship between Section 4(6) and Rules 146 and 242. Specifically, comments were invited on the concepts of "accredited investor," "qualified issuer," and "issue of securities" as these concepts currently exist in the three exemptions. The Commission also invited public discussion as to whether the ceiling should be raised for existing exemptive provisions under Section 3(b), or whether a new exemption tailored to offerings between $2,000,000 and $5,000,000 should be developed. The Commission expects to consider specific proposals regarding the various exemptions in Summer 1981. Agency contact: Michael J. Eizelman, Office of Small Business Policy, Division of Corporation Finance, (202) 272–3060.

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[1] 5 U.S.C. 602(a)(1).

[2] 5 U.S.C. 602(a)(2).

[3] 5 U.S.C. 602(a)(3).

[4] See Securities Act Release No. 6202 (March 20, 1980) (45 FR 19221).

[5] 5 U.S.C. 602(d).

[6] Securities Act Release No. 6275 (December 23, 1980) (46 FR 2637).

[7] Securities Exchange Act Release No. 16888 (June 2, 1980) (45 FR 40145).

[8] Securities Act Release No. 6274 (December 23, 1980) (46 FR 2631).

4. Amendments to Regulation C

The Commission may propose, using its rulemaking authority under Section 19(a) of the Securities Act, a comprehensive revision and reformatting of the rules contained in Regulation C under the Securities Act so that the rules will reflect current Commission disclosure policies. The purpose of Regulation C is to standardize the mechanics of securities registration under the Securities Act, implementing the statute and providing more specific instructions for registrants than are contained in the Securities Act itself. Regulation C is being reviewed in its entirety in conjunction with the Commission's ongoing program to integrate and streamline disclosure regulations under the Federal securities laws. Changes in the rules will be consonant with this policy and will improve the efficiency of the registration process under the Securities Act. The Commission intends to consider the proposal of a revised Regulation C sometime during summer 1981. Agency contact: W. Scott Cooper, Office of Disclosure Policy, Division of Corporation Finance, (202) 272–2589.

5. Comprehensive Revision to System for Registration of Securities Offerings.

The Commission may adopt, under Sections 6, 7, 10 and 19(a) of the Securities Act, a comprehensive revision to its system for registration of securities offerings. Such offerings must be registered pursuant to the Securities Act in such a manner and form as the Act and the Commission by rule prescribe. Under the proposal, which was published in Securities Act Release No. 6235 (September 2, 1980) (45 FR 63693), three new forms would constitute the basic disclosure format for most Securities Act registrations, with different levels of disclosure and delivery requirements applicable for different levels of companies registering offerings of securities. Under the proposal, the three new forms would replace existing Form S–1 (17 CFR 239.26) and Form S–2 (17 CFR 239.12), Form S–7 (17 CFR 239.26) and Form S–16 (17 CFR 239.27). The framework of the proposal contemplates dividing issuers into three categories. The category to which an issuer belongs would determine the extent to which previously disseminated information would also be required to be presented in the prospectus or otherwise delivered to potential investors. Because of its prior impact on the market and to ensure its accuracy, information not actually delivered to investors would be incorporated by reference in the forms. The Commission intends to consider appropriate action on the proposal sometime in Summer 1981. Agency Contact: William H. Carter, Office of Disclosure Policy, Division of Corporation Finance, (202) 272–2589.

6. Revision of Regulation S-K and Registration and Reporting Guides

The Commission may adopt, pursuant to Sections 7, 10 and 19(a) of the Securities Act and Sections 13, 14, 15(d) and 23(a) of the Exchange Act, a proposal to recategorize by subject matter Regulation S-K, the repository of standard instructions for disclosure under the Securities Act and the Exchange Act, and to withdraw or codify, where appropriate, Commission Guides for the Preparation and Filing of Registration Statements and Reports. These proposals were published for comment in Securities Act Release No. 6276 (December 23, 1980.) (46 FR 78). The proposed changes to Regulation S-K would, for the most part, re-arrange items of disclosure already required. The proposals would also expand Regulation S-K to include uniform disclosure items with respect to the distribution of securities. Such disclosure items now appear in each separate registration form. The proposals concerning the Guides would: (1) Eliminate all presently existing Guides, except those which pertain to disclosure by certain industries; (2) transfer to Regulation C those Guides which relate to procedural matters; and (3) transfer to Regulation S-K those Guides which set forth certain disclosure requirements. The proposals would result in the outright elimination of 22 out of 66 Guides. The proposals are part of the Commission's on-going sunset review of regulations and are designed to eliminate unnecessary requirements and to consolidate and organize all remaining regulations into a coherent framework. The comment period on the proposals ended on March 6, 1981. The Commission intends to consider appropriate action on this proposal in Summer 1981. Agency contact: Linda Quinn, Office of Disclosure Policy, Division of Corporation Finance, (202) 272–3206.

7. Revision of Form 8-K

The Commission may propose amendments to Form 8-K, the form for current reports to be filed by companies subject to the continuous disclosure requirements of the Exchange Act. The amendments would be proposed in order to ensure that the provisions of Form 8-K are consistent with and complement the recently revised provisions of the other forms for reporting under that act, (*i.e.* Forms 10-K and 10-Q). The objective is to make Exchange Act reporting sufficiently complete and of sufficiently high quality that it is able to perform its essential role in the Commission's integration program. The amendments, which may include changes in both the timing and nature of current disclosure requirements, are anticipated to be proposed during Summer 1981 pursuant to the Commission's Exchange Act rulemaking authority in Section 23(a) and the periodic reporting requirements of Sections 13(a) and 15(d). Agency contact: Catherine Collins McCoy, Office of Disclosure Policy, Division of Corporation Finance, (202) 272–2589.

8. Rule 463 and Form SR

The Commission may consider a comprehensive revision of Rule 463 and related Form SR under the Securities Act. Proposed amendments were published for comment in Securities Act Release No. 6251 (October 23, 1980) (45 FR 71811). Currently, Rule 463 requires first-time issuers to file on Form SR, within specified time limits, a report of sale of securities and use of proceeds therefrom. The proposed revision would expand the types of issuers required to file Form SR and would revise the disclosure requirements for Form SR, particularly those relating to use of proceeds and accounting for the expenses of offerings. The proposal is designed to elicit more meaningful information regarding first-time issuers, direct distributions and best efforts offerings. The legal basis for Rule 463 and Form SR thereunder is found in Section 19(a) of the Securities Act, which gives the Commission authority to make "such rules and regulations as may be necessary" to carry out the provisions of the Securities Act. The Commission expects to consider the appropriate action on Rule 463 and Form SR in late 1981. Agency contact: Susan Davis, Office of Disclosure Policy, Division of Corporate Finance, (202) 272–2390.

B. Securities Markets and Securities Industry Rules

1. Rules 10b–10 and 15c2–12

The Commission intends to consider whether to adopt or withdraw previously proposed amendments to Rule 10b–10 and proposed 15c2–12 under the Exchange Act. The amendments and the proposed rule would require brokers, dealers, and municipal securities dealers to disclose on customers' confirmations the amount of any remuneration received in certain transactions in debt securities. The proposals were published in Securities Exchange Act Release No. 15220 (Oct. 6, 1978) (43 FR 47333). The Commission at the same time may also consider whether to propose amendments to Rule 10b–10 to require the disclosure of certain yield and call information for transactions in debt securities and also to require the disclosure of the payment of "special compensation" to associated persons in connection with any securities transaction. The proposed amendments and the other proposals currently being considered are intended to provide customers with information that may be pertinent in assessing the quality of services provided by a broker or dealer. The amendments to Rule 10b–10 would be adopted pursuant to the Commission's authority under Sections 3, 10, 11, 15, 17 and 23 of the Exchange Act. The proposed Rule 15c2–12 would also be adopted pursuant to the above sections, as well as Section 15B of the Exchange Act. The Commission anticipates considering the proposals during the third calendar quarter of 1981. Agency contact: Jeffrey E. Jordan, Division of Market Regulation, (202) 272–2847.

2. Rule 15b7–1

The Commission plans to consider during the third calendar quarter of 1981 whether to repropose for further public comment proposed Rule 15b7–1. Section 15(b)(7) of the Exchange Act states that the Commission shall, by rule, adopt minimum qualification standards for broker-dealers. In implementing this section in 1977, the Commission proposed Rule 15b7–1 for comment in Securities Exchange Act Release No. 13679 (June 27, 1977) (42 FR 34328). The proposed rule would establish uniform minimum qualification standards for all registered brokers and dealers (including SECO brokers and dealers) and their associated persons. The Commission will consider whether to consolidate and simplify various self-regulatory organization requirements and to eliminate unnecessary disparities in requirements of self-regulatory organizations and the Commission's rules applicable to non-member broker-dealers. Agency contact: Patricia Payne, Division of Market Regulation, (202) 272–2840.

3. Rules 15c3–2 and 17a–23

The Commission intends to consider during the third calendar quarter of 1981 whether to propose a new Rule 17a–23 and to repropose previously proposed amendments to Rule 15c3–2, prescribing minimum delivery and disclosure requirements for customer account statements. The Commission may consider whether to amend Rule 15c3–2 to require broker-dealers to send at least quarterly a statement to each customer for whom the broker-dealer owes or has owed money or securities since the date of the last statement. The statement would set forth all money balances and securities positions in the customer's account as of the date of the statement and would make disclosures relating to use of customer securities and free credit balances in the broker-dealer's business. Also, broker-dealers would be required to send a complete account statement, showing all transactions in a customer's account, upon request. Rule 17a–23, in contrast to Rule 15c3–2, would require that most broker-dealers automatically send at least quarterly a complete account statement to their customers. This rule also would include a requirement that the account statement disclose information on the remuneration received from the customer by the broker-dealer. The proposals are designed to make available to investors on a regular basis information necessary for them to understand, reconcile, and evaluate trading activity in their accounts. These rules would be proposed pursuant to the Commission's authority under Sections 15, 17, and 23 of the Exchange Act. A proposal to amend Rule 15c3–2 was previously published in Securities Exchange Act Release No. 11196 (Jan. 23, 1975) (40 FR 4454). Agency contact: Michael Cline, Division of Market Regulation, (202) 272–2415.

4. Rule 17a–5

The Commission intends to consider during the third calendar quarter of 1981 whether to propose to engage in rulemaking to reconsider whether existing exemptions from the requirement that brokers and dealers file audited reports pursuant to Rule 17a–5 adequately reflect current costs to broker-dealers and benefits to the public. Currently, most broker-dealers file an annual report with audited financial statements pursuant to Rule 17a–5. Some broker-dealers, however, are exempt from that requirement, and the Commission may consider whether to create new exemptions or to eliminate any of the existing exemptions, except those for specialists and floor brokers, in order to assure the integrity of required reports. The amendments would be proposed pursuant to the Commission's rulemaking authority under Sections 15, 17 and 23 of the Exchange Act. Agency contact: Michael Macchiaroli, Division of Market Regulation, (202) 272–2372.

5. Rule 17a–5

During the third calendar quarter of 1981 the Commission intends to consider whether to repropose for further public comment amendments to Parts II and IIA of the Financial and Operational Combined Uniform Single Report ("FOCUS Report"), which is required to be filed by brokers and dealers pursuant to Rule 17a–5. Part II of the FOCUS Report is filed quarterly by brokers and dealers who clear transactions or carry customer accounts; a shorter Part IIA of the FOCUS Report is filed quarterly by brokers and dealers who neither clear transactions nor carry customer accounts. The amendments are designed to revise and clarify certain operational and financial reporting requirements. The amendments were first published for public comment in Securities Exchange Act Release No. 17136 (Sept. 9, 1980) (45 FR 62092) pursuant to Sections 15, 17, and 23 of the Exchange Act. Agency contact: James Moody, Division of Market Regulation, (202) 272–2370.

C. Investment Management Rules

1. Rule 3a–4

In Investment Company Act Release No. 11391 (October 10, 1980) (45 FR 69479), the Commission proposed for public comment Rule 3a–4 which would deem investment management services providing their clients with individualized treatment not to be investment companies for purposes of the Investment Company Act. The principal objective of the rule would be to provide a "safe harbor" for any investment manager which provides its clients with treatment based on the individual needs and goals of each client. Under such circumstances, regulation of investment management services under the Investment Company Act would appear to be unnecessary. The authority of the Commision to promulgate this rule is in Sections 6(c) and 38(a) of the investment Company Act. The comment period for the proposal expired in January 1981, and the approximate date for completing action is August 31, 1981. Agency contact: Arthur J. Brown, Division of Investment Management, (202) 272–2048.

2. Proposed Rule 22d-6

The Commission is considering whether to propose a Rule 22d–6, which would exempt certain persons from the provisions of Section 22(d) of the Investment Company Act. That section generally requires that redeemable securities issued by investment companies be sold to the public only at a current offering price described in the prospectus. The rule would permit an investment company and its underwriters to decide the pricing system for the securities being offered without first obtaining Commission approval therefore or a specific exemption from Section 22(d) of the Investment Company Act. The authority for the Commission to propose any such rule is in Sections 6(c) and 38(a) of that Act. The approximate date for completing action is June 30, 1981. Agency contact: Arthur J. Brown, Division of Investment Management, (202) 272–2048.

3. Rule 180

In Securities Act Release No. 6247 (October 14, 1980) (45 FR 69476) the Commission proposed for public comment Rule 180, which would exempt from the registration requirements of the Securities Act interests and participations issued in connection with the tax-qualified retirement plans commonly known as "H.R. 10" plans of certain partnerships. Because H.R. 10 plans are not entitled to the exemption from registration available to the tax-qualified retirement plans of certain employers, many such plans have applied for and received exemptions from such registration requirements. The proposed rule is designed to obviate the need for most, if not all, such applications. The legal basis of the Commission's authority to take this action is in Section 3(a)(2) of the Securities Act. The comment period for this rule expired in January 1981, and the approximate date for completing action is September 30, 1981. Agency contact: Arthur J. Brown, Division of Investment Management, (202) 272–2048.

4. Amendment of Rule 17g–1

In Investment Company Act Release No. 11193 (June 2, 1980) (45 FR 38407), the Commission proposed for public comment an amendment to Rule 17g–1 under the Investment Company Act, which would clarify the scope of the rule by explicitly requiring bonding of officers and employees of an investment company's depositor, trustee, investment adviser or other manager, and of any affiliated person of such persons, who, because they have access to the securities or funds of the investment company, function as officers and employees of the investment company. The authority of the Commission to promulgate such rule is in Sections 17(g) and 38(a) of the Investment Company Act. The period for public comment expired in July 1980, and the approximate date for completing action is July 31, 1981. Agency contact: Arthur J. Brown, Division of Investment Management, (202) 272–2048.

5. Amendments to Form N–1Q

The Commission proposed amendments to Form N–1Q under the Investment Company Act in Investment Company Act Release No. 11448 (November 17, 1980) (45 FR 78158). Form N–1Q is used by most investment management companies to report the occurrence during the preceding calendar quarter of any one or more of twelve specified events. The principal change proposed by the Commission was to replace the requirement that investment companies filing Form N–1Q list certain information about changes in their securities portfolios on a calendar quarterly basis with a requirement that this information be reported annually on either Form N–1 or Form N–2, the registration statement forms under the Investment Company Act and the Securities Act for, respectively, open-end and closed-end management investment companies. In addition, the Commission proposed to add the continuation of the reporting company's current investment advisory contract to the list of routine matters submitted to a vote of the company's security holders which need not be reported on Form N-1Q. The proposals are designed to reduce the number of times a reporting company must file Form N–1Q. The legal basis for the proposals lies in the Commission's authority to prescribe quarterly reporting by investment companies under Sections 8 and 30 of the Investment Company Act and Sections 13 and 15(d) of the Exchange Act. The comment period expired on February 27, 1981. The approximate date for completing action is April 30, 1981. Agency contact: Jane A. Kanter, Division of Investment Management, (202) 272–2112 or Anthony A. Vertuno, Division of Investment Management, (202) 272–2107.

6. Standardization of Financial Statement Requirements

On December 15, 1980 (in Investment Company Act Rlease No. 11490 [45 FR 83517]), the Commission proposed amendments to Regulation S–X, the Commission's general regulation on the form and content of and requirements for financial statements in disclosure documents; amendments to Forms N–1 and N–2, the registration statement forms under the Securities Act and Investment Company Act for, respectively, open-end and Investment Company Act for respectively, open-end and closed-end management companies; and new Rule 30d–1 under the Investment Company Act. The proposals would reconcile the differences in the financial statements required of management for investment company prospectuses and shareholder reports and would thus permit such companies to prepare a single set of financial statements for both the annual report to shareholders and the updated prospectus. In addition, open-end management investment companies would be permitted, at their option, either to incorporate by reference financial statements from shareholder reports into the prospectus or to transmit a currently effective prospectus as the equivalent of any report to shareholders. The Commission's legal basis for the proposed amendments is the Commission's authority under Section 7, 8 and 19(a) of the Securities Act to prescribe the form of prospectuses and under Sections 8, 30(d), 31(c) and 38(a) of the Investment Company Act to prescribe the form of shareholder reports and to provide for uniformity in financial statements filed by investment companies. The comment period on these proposals expired on March 16, 1981, and the approximate date for completing action is June 1, 1981. Agency contact: Susan P. Hart, Division of Investment Management,

(202) 272–2096 or Dianne E. O'Donnell, Division of Investment Management, (202) 272–2116.

7. Revisions to Forms ADV and ADV–S, Amendments to Rules 204–1 and 204–3

On January 30, 1979, the Commission adopted new integrated disclosure requirements for investment advisers registered under the Advisers Act, which became effective on July 31, 1979 (Advisers Act Release No. 664 [44 FR 7870]). These requirements consist principally of certain revisions to Form ADV, the investment adviser registration form; new Rule 204–3 (the "Brochure Rule") and new Form ADV–S, a short annual supplement to Form ADV. Form ADV was reorganized into two parts. Revisions contained in Part I reflect, in part, amendments to the Advisers Act made by the Securities Acts Amendments of 1975 and also seek information about the basic characteristics of the advisory industry to facilitate the Commission's efforts to improve its regulatory effort regarding investment advisers and to allow its investment adviser inspection program to operate more effectively. Revisions contained in Part II, in substantial part, related to the requirements of the Brochure Rule. As a general matter, the Brochure Rule requires an investment adviser to deliver, or to offer to deliver, to prospective and existing clients a written disclosure statement which contains specified information regarding the background and business practices of the adviser. An investment adviser may deliver or offer to deliver either a copy of Part II of Form ADV or another document containing at least the same information. Form ADV–S is a two-page supplement to Form ADV which must be filed annually by all registered investment advisers. The Commission intends to propose amendments to the integrated disclosure requirements designed to correct inconsistencies and technical errors and to eliminate unnecessary provisions in the forms and rules. The proposals would have their legal basis in the Commission's authority under: (i) Section 203(c) to prescribe the form to be used, and certain information to be provided in applications, for investment adviser registration; (ii) Section 204 to prescribe records which an adviser subject to registration shall make and keep and furnish or make available to the Commission; (iii) Section 206(4) to define and prescribe means reasonably designed to prevent acts, practices and courses of business by investment advisers which would be fraudulent, deceptive or manipulative; and (iv) Section 211(a) to make or amend such rules as are necessary or appropriate to the exercise of the functions and power conferred upon the Commission in the Advisers Act. The approximate date for completing action is May 27, 1981. Agency contact: Michael Serenson, Division of Investment Management, (202) 272–2079.

8. Amendments to Rule 204–2

Section 204 of the Advisers Act requires investment advisers subject to registration under Section 203 to make and keep such records and furnish such copies thereof as the Commission, by rule, may prescribe. Section 204 also provides that such records are subject at any time to reasonable examination by the Commission's representatives. Rule 204–2, adopted in 1962, sets out the requirements which investment advisers subject to registration must follow as to recordkeeping. The staff has recently completed its first comprehensive review of Rule 204–2 since its adoption. As a result of this review, a number of amendments to Rule 204–2 are being proposed which would clarify the nature and extent of the books and records required to be kept by investment advisers. These proposed amendments reflect changes in the nature of the investment advisory industry since adoption of the rule and the experience of the Commission staff in conducting its inspection program. The proposed amendments would be adopted pursuant to the Commission's authority under: (i) Section 204 to prescribe such records an adviser subject to registration shall make, keep, furnish and make available to the Commission; and (ii) Section 211(a) to make, issue, amend and rescind such rules and regulations and such orders as are necessary or appropriate to the exercise of the functions and powers conferred upon the Commission elsewhere in the Advisers Act. The approximate date for completing action in September 30, 1981. Agency contact: Michael Ber[illegible]on, Division of Investment Management, (202) 272–2079.

II. Public Comment

The Commission invites public comment on any aspect of the subject areas or particular items in the foregoing regulatory flexibility agenda.

By the Commission.

George A. Fitzsimmons,

Secretary.

April 20, 1981.

[FR Doc. 81–12670 Filed 4–28–81; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Ch. II

[Release No. 33-6323, 34-17991, 35-22101, 39-637, IC-11825 and IA-760; File No. S7-888]

Plan for Periodic Review of Commission Rules for Purposes of the Regulatory Flexibility Act

AGENCY: Securities and Exchange Commission.

ACTION: Publication of plan for periodic review of Commission rules for purposes of the Regulatory Flexibility Act.

SUMMARY: The Securities and Exchange Commission is today publishing, pursuant to Chapter Six of the Administrative Procedure Act, a plan for the periodic review of Commission rules. The plan provides a ten-year schedule for the review of identified Commission rules. The Commission is also publishing a description of the rules which are to be reviewed during the next twelve months. The Commission is seeking public comment on the identified rules scheduled for review in the next twelve months.

DATE: Comments are due by August 31, 1981.

ADDRESS: Person wishing to submit written views should file four copies thereof with George A. Fitzsimmons, Secretary, Securities and Exchange Commission, Room 892, 500 North Capitol Street, Washington, D.C. 20549. All submissions should refer to File No. S7-888 and will be available for public inspection at the Commission's Public Reference Section, Room 6101, 1100 L Street, N.W., Washington, D.C. 20549.

FOR FURTHER INFORMATION CONTACT: Jeffry L. Davis, Acting Director, Directorate of Economic and Policy Analysis, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION: The Regulatory Flexibility Act (Pub. L. No. 96-354, 94 Stat. 1164 (September 19, 1980)) ("RFA") added a new Chapter Six to the Administrative Procedure Act (5 U.S.C. 601 *et seq.*). Among other things the RFA requires that the Commission publish a plan for the periodic review of all rules issued by the agency which have or will have a significant economic impact upon a substantial number of small entities. The purpose of the review is to determine whether such rules should be continued without change, or should be amended or rescinded, consistent with the stated objectives of applicable statutes, to minimize any significant economic impact of such rules upon a substantial number of small entities. The plans is to provide for the review of all such rules in effect on January 1, 1981 within ten years of that date and for the review of rules adopted thereafter within ten years of the publication of their adoption as final rules.[1]

In conducting this review, the Commission is required to consider the following factors:

(i) the continued need for the rule;

(ii) the nature of complaints or comments received concerning the rule from the public;

(iii) the complexity of the rule;

(iv) the extent to which the rule overlaps, duplicates or conflicts with other Federal rules, and to the extent feasible, with state and local government rules; and

(v) the length of time since the rule has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the rule.[2]

With respect to those rules which will be reviewed in the near-term, the RFA requires that the Commission publish each year a list of such rules to be reviewed during the succeeding twelve months. The list is to include a brief description of each rule, a statement of the need for and legal basis for each such rule, and a solicitation of public comment.

In a separate action, the Commission has proposed to define the terms "small business" and "small organization" for purposes of the RFA as those terms may apply to entities that are issuers of securities or otherwise engaged in securities or other business activities subject to disclosure and reporting requirements or regulation by the Commission pursuant to the Securities Act of 1933, 15 U.S.C. 77a *et seq.* ("Securities Act"), the Securities Exchange Act of 1934, 15 U.S.C. 78a *et seq.* ("Exchange Act"), the Public Utility Holding Company Act of 1935, 15 U.S.C. 79a *et seq.* ("Holding Company Act"), the Trust Indenture Act of 1939, 15 U.S.C. 77aaa *et seq.* ("Trust Indenture Act"), the Investment Company Act of 1940, 15 U.S.C. 80a *et seq.* ("Investment Company Act"), or the Investment Advisers Act of 1940, 15 U.S.C. 80b-1 *et seq.* ("Advisers Act").[3] In conducting the review called for by the Commission's plan, the staff will rely on the definitions of the terms "small business" and "small organization" which are finally adopted by the Commission.

I. Periodic Review of Rules

Although 5 U.S.C. 610(a) requires an agency to publish a periodic review plan which applies only to those rules which have or will have a significant economic impact on a substantial number of small entities, the Commission's plan generally provides for the review of a much broader class of rules. This approach was adopted primarily because the Commission staff had already targeted certain blocks of rules for its own internal review. It was determined in such cases that staff resources would be economized by simply expanding the scope of the planned reviews to accommodate the review requirements of the RFA. In other cases it was the staff's judgment that the initial determination as to whether certain rules or blocks of rules had a significant economic impact on a substantial number of small entities should receive further analysis. Thus, for each of the rules listed below, the Commission's plan contemplates a review which, at a minimum, will involve an analysis to determine more definitively whether such rule has a significant economic impact on a substantial number of small entities. The rules identified as having such an impact will be subjected to a review which will take into consideration all of the factors required to be considered by 5 U.S.C. 610(b). In certain instances, only the review required by the RFA will be conducted; however, for the majority of the rules listed below the Commission staff intends to conduct a broader review, with a view to identifiying those rules in need of modification or even rescission. Such reviews would be conducted by the staff regardless of whether such rules have been determined to have a significant economic impact on a substantial number of small entities.

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[1] 5 U.S.C. 610(a).

[2] 5 U.S.C. 610(b).

[3] See Securities Act Release No. [illegible] (March 20, 1980) (45 FR [illegible]).

Accordingly, the Commission's plan for the periodic review of its rules is as follows:

17 CFR	Title
Rules Scheduled for Review in 1981	
210.1-02(w)	Definition of significant subsidiary.
210.3-01—210.3-05.	Separate financial statements of the registrant.
210.3-07	Past successions to other businesses.
210.3-08	Future successions to other businesses.
210.3-09	Financial statements of subsidiaries not consolidated and 50 percent or less owned persons.
210.3-10	Financial statements of affiliates whose securities collateralize an issue registered or being registered.
210.3A-02(a)	Consolidated financial statements of the registrant and its subsidiaries—separate financial statements of certain subsidiaries.
210.3A-03	Group financial statements of subsidiaries not consolidated and 50 percent or less owned persons.
210.3A-05	Reconciliation of investment of a person in subsidiaries not consolidated and 50 percent or less owned persons accounted for by the equity method, and equity of such person in their net assets.
210.4-08(e)	Restrictions on dividends availability.
210.5-04 (Schedule III).	Condensed financial information of registrant.
210.6-01—210.6-34.	Management investment companies, unit investment trusts, face amount certificate investment companies and employee stock purchase, savings and similar plans.
210.7-01—210.7b-06.	Insurance companies other than life and title insurance companies.
210.9-01—210.9-05.	Banks and bank holding companies.
210.12-04	Investments in, equity in earnings of, and dividends received from affiliates and other persons.
230.146	Rule 146—Transactions by an issuer deemed not to involve any public offering.
230.240	Rule 240—Exemption of certain limited offers and sales by closely-held issuers.
230.242	Rule 242—Exemption of limited offers and sales by qualified issuers.
230.251—230.264.	Regulation A—General exemptions from registration.
230.400—230.494.	Regulation C—Registration requirements.
239.11	Form S-1—General form of registration statements.
239.26	Form S-7—Short form Securities Act registration for securities of certain issuers.
239.27	Form S-16—Registration of securities of certain issuers offered pursuant to certain types of transactions.
239.28	Form S-18—Optional form for the registration of securities to be sold to the public by the issuer for an aggregate cash price not to exceed $5,000,000.
239.90—239.95.	Forms 1-A—6-A—Regulation A notifications and consents.
239.146	Form 146—Report of offerings made in reliance on Rule 146.
239.240	Form 240—Notice of sales of securities pursuant to Rule 240.
239.242	Form 242—Notice of sales of securities pursuant to Rule 242.
240.3a40-1	Designation of financial responsibility rules.
240.15b5-1	Extension of registration for purposes of the Securities Investor Protection Act of 1970 after cancellation or revocation.
240.15b-10	Execution of investment company portfolio transactions.
240.15c2-11	Initiation or resumption of quotations without specified information.
240.17Ac2-1; 249b.100	Application for registration of transfer agents and description of transfer agent registration form.
240.19h-1	Notice by a self-regulatory organization of proposed admission to or continuance in membership or participation or association with a member of any person subject to a statutory disqualification and applications to the Commission for relief therefrom.
250.7(a)	Companies deemed not to be electric or gas utility companies.
270.5b-1	Definition of "total assets"
270.5b-2	Exclusion of certain guarantees as securities of the guarantor.
270.6b-1	Exemption of employees' securities company pending determination of application.
274.11	Form N-1—Registration statement of open-end management investment companies.
275.204-1	Amendments to applications for registration of investment advisers.
275.204-2	Books and records to be maintained by investment advisers.
275.204-3	Written disclosure statements.
279-1	Form ADV—application for registration as an investment adviser.
279.3	Form ADV-S—annual supplement for registered investment advisers.
Rules Scheduled for Review in 1982	
210.4-01—210.4-08 (except 210.4-08(e)).	Regulation S-X, Article 4—Rules of general application.
210.5-01—210.5-04.	Regulation S-X, Article 5—Commercial and industrial companies.
210.5A-01—210.5A-02.	Regulation S-X, Article 5A—Companies in the development stage.
210.8-01—210.8-03.	Regulation S-X, Article 8—Committees issuing certificates of deposit.
210.12-01—210.12-43.	Regulation S-X, Article 12—Form and content of schedules.
230.145	Rule 145—Reclassifications of securities, mergers, consolidations or acquisitions of assets.
230.300—230.346.	Regulation B—Exemptions relating to fractional undivided interests in oil or gas rights.
239.17	Form S-10—Registration statement for oil or gas interests or rights.
239.23	Form S-14—Registration statement for certain transactions under rule 145.
239.101	Form 1-G—Report of sale of oil or gas rights; Form 2G—Report of results of offering.
240.6a-1—240.6a-3.	Registration and exemption of exchanges.
240.10b-8	Distribution through rights.
240.14a-1—240.14a-12.	Regulation 14A—Solicitation of proxies.
240.14a-101	Schedule 14A—Information required in proxy statement.
240.14a-102	Scheduled 14B—Information to be included in statements filed by or on behalf of a participant (other than the issuer) pursuant to 240.14a-11(c).
240.14c-1—240.14c-7.	Regulation 14C—Distribution of information pursuant to Section 14(c) of the Exchange Act.
240.14c-101	Schedule 14C—Information required in information statement.
240.15b1-1	Application for registration of broker or dealer.
240.15b1-3	Registration of successor to registered broker or dealer
240.15b1-4	Registration of fiduciaries.
240.15b1-5	Consent to service of process by non-resident brokers or dealers.
240.15b2-1	Adoption of application filed by predecessor.
240.15b3-1	Amendments to applications.
240.15b6-1	Withdrawal from registration.
240.15b8-1	Qualifications and fees relating to broker-dealers who are not members of a national securities association.
240.15c3-1	Net capital requirements for brokers and dealers.
240.17f-2	Fingerprinting of securities industry personnel.
240.17Ac3-1	Withdrawal from registration as a transfer agent.
240.19c-3	Off-board principal and agency transactions in newly listed securities.
249.1—249.1a.	Forms for registration and exemption of securities exchanges.
249.501—249.510.	Forms for registration of brokers and dealers.
249b.101	Form TA-W—Notice of withdrawal from registration as a transfer agent.
270.3c-2	Definition of beneficial ownership in small business investment companies.
270.3c-3	Definition of certain terms used in Section 3(c)(1) of the Investment Company Act with respect to certain debt securities offered by small business investment companies.
270.3c-4	Definition of "common trust fund" as used in Section 3(c)(3) of the Investment Company Act.
270.17d-1	Applications regarding joint enterprises or arrangements and certain profit-sharing plans.
270.18c-1	Exemption of privately-held indebtedness.
270.18c-2	Exemptions of certain debentures issued by small business investment companies.
270.18f-2	Fair and equitable treatment for holders of each class or series of stock of series investment companies.
270.31a-1	Records to be maintained by registered investment companies, certain majority-owned subsidiaries thereof, and other persons having transactions with registered investment companies.
270.31a-2	Records to be preserved by registered investment companies, certain majority-owned subsidiaries thereof, and other persons having transactions with registered investment companies.
270.31a-3	Records prepared or maintained by persons other than those required to maintain and preserve them.
274.11a-1	Form N-2—Registration statement of closed-end management investment companies.
275.206(4)-2	Custody or possession of funds or securities of clients.
275.206(4)-3	Cash payments for client solicitations.
Rules Scheduled for Review in 1983	
210.1-01	Application of Regulation S-X.
210.1-02 (except 210.1-02(v)).	Definitions of terms used in Regulation S-X.
210.2-01—210.2-05.	Qualifications and reports of accountants.
210.3-01—210.3-18.	General instructions as to financial statements.
210.3A-01—210.3A-05.	Consolidated and combined financial statements.
230.144	Rule 144—Persons deemed not to be engaged in a distribution and therefore not underwriters.
230.147	Rule 147—"Part of an issue," "person resident," and "doing business within" for purposes of Section 3(a)(11) of the Securities act.
230.148	Rule 148—Persons not deemed to be underwriters of securities issued or sold in connection with bankruptcy proceedings.
240.3a12-1; 240.3a12-2; 240.3a12-4.	Miscellaneous Exchange Act exemptive rules regarding certain mortgage securities and securities guaranteed by States or political subdivisions thereof.
240.8c-1	Hypothecation of customers' securities.
240.12a-5	Temporary exemption of substituted or additional securities.
240.15a-2—240.15a-5.	Exemptions from broker-dealer registration.
240.15b10-8	Standards for public offerings of securities of SECO broker-dealers.
240.15b10-9	Self-underwriting by SECO broker-dealers.
240.15c3-2	Use of customers' free credit balances.
240.15c3-3	Customer protection—reserves and custody of securities.

17 CFR	Title
240.16a-1—240.16a-10	Reports of directors, officers and principal stockholders.
240.16b-1—240.16b-11	Exemption of certain transactions from Section 16b of the Exchange Act.
240.16c-1—240.16c-3.	Exemption of certain securities from Section 16c of the Exchange Act.
24C 16e-1	Arbitrage Transactions.
240.17Ad-1—240.17Ad-7.	Rules pertaining to transfer agents.
249.26	Notification of the admission to trading of a substituted or additional class of security under Rule 12a-5.
249.103—249.104.	Forms 3 and 4—Reports required of officers, directors and principal stockholders pursuant to Section 16.
270.2a-1	Valuation of portfolio securities in special cases.
270.2a-2	Effect of eliminations upon valuation of portfolio securities.
270.2a-3	Definition of "investment adviser" of an investment company for purposes of Section 12(d)(3) of the Investment Company Act.
270.2a-4	Definition of "current net asset value" for use in computing periodically the current price of a redeemable security.
270.2a-5	Certain persons not deemed interested persons.
270.2a-6	Certain transactions not deemed assignments.
270.15a-1	Exemption from stockholders' approval of certain small investment advisory contracts.
270.15a-2	Annual continuance of contracts.
270.15a-3	Exemption for initial period of investment adviser of certain registered separate accounts from requirement of security holder approval of investment advisory contract.
270.15a-4	Temporary exemption for certain investment advisers.
270.22c-1	Pricing of redeemable securities for distribution, redemption and repurchase.
274.5	Form N-5—Registration statement for small business investment companies under the Securities Act and the Investment Company Act.
274.108	Form N-5R—Annual reports of small business investment companies pursuant to Section 30 of the Investment Company Act and Section 13 or 15(d) of the Exchange Act.
275.203-2	Withdrawal from registration.
275.203-3	Fees for registrants and applicants.
275.206(3)-2	Agency cross transactions for advisory clients.
Rules Scheduled For Review in 1984	
210.10-01	Interim financial statements.
210.11-01—210.11A-02.	Statement of source and application of funds.
230.100—230.143; 230.149—230.156; 230.161; 230.170; 230.174; and 230.175.	Defined terms for purposes of the Securities Act and miscellaneous Securities Act rules.
230.651—230.656.	Regulation F—Exemption for assessment on assessable stock and for assessable stock offered or sold to realize amount of assessment thereon.
240.3a12-3	Rule 3a12-3—Exemption from Sections 14(a), 14(b), 14(c), 14(f) and 16 for securities of certain foreign issuers.
240.3b-4	Rule 3b-4—Definition of "foreign government", "foreign issuer" and "foreign private issuer".
240.3b-5	Rule 3b-5—Non-exempt securities issued under governmental obligations.
240.10b-7	Stabilizing to facilitate a distribution.
240.11A2-1	National market system securities.
240.11Aa3-1	Tape reporting.
240.11Ac1-1	Quote reporting.
240.11Ac1-2	Vendor display rule.
240.12d2-1	Suspension of trading.
240.12d2-2	Removal from listing and registration of matured, redeemed or retired securities.
240.13a-16; 240.15d-16.	Reports of foreign issuers on Form 6-K.
240.15b9-1—240.15b9-2.	Fees and annual assessments for SECO broker-dealers.
240.17a-2	Reports on stabilizing activities.
240.17a-17	Notices and reports by block positioners.
240.17a-19	Reports by national securities exchanges and registered national securities associations of changes in membership status of any of their members.
240.17f-1	Requirements for reporting and inquiry with respect to missing, lost, counterfeit or stolen securities.
240.19b-3	Prohibiting fixing of rates of commission by exchanges.
240.19b-4	Filings with respect to proposed rule changes by self-regulatory organizations.
240.19g2-1	Enforcement of compliance by national securities exchanges and registered securities associations with the Act and rules and regulations thereunder.
249.819a	Form for proposed rule changes by self-regulatory organizations.
249.25	Form 25—Removal of securities from listing and registration.
249.212	Form 12—Registration of securities by issuers which file reports with certain other federal agencies.
249.218—249.220F; 249.306; 249.316—249.319.	Forms 18, 19 and 20F for registration of foreign securities. Forms 8K, 18K and 19K for periodic reports by foreign issuers.
249.504a; 249.505.	Forms SECO-4-80 and SECO-5—Assessment and information forms for SECO broker-dealers.
249.633	Form X-17A-17—Report by block positioners.
249.635	Form X-17A-19—Report of change in membership status.
249.717	Reports of stabilizing activities.
249.1200	Form X-17F-1A—Report for missing, lost, counterfeit or stolen securities.
270.8b-16	Amendments to registration statements.
270.10f-1	Conditional exemption of certain underwriting transactions.
270.17a-1	Exemption of certain underwriting transactions exempted by 270.10f-1.
270.17a-2	Exemption of certain purchase, sale, or borrowing transactions.
270.17a-3	Exemption of transactions with fully-owned subsidiaries.
270.17a-4	Exemption of transactions pursuant to certain contracts.
270.17a-5	Pro rata distribution neither "sale" nor "purchase."
270.17a-6	Exemption of transactions with certain affiliated persons.
270.17a-7	Exemption of certain purchase or sale transactions between affiliated registered investment companies.
270.17a-8	Mergers of certain affiliated investment companies.
270.22d-4	Sale of redeemable securities pursuant to certain mergers with private investment companies.
270.22d-6	Exemption from Section 22(d) of the Investment Company Act for certain offers of exchange by certain registered investment companies.
270.30a-1	Annual reports.
270.30-2(a)	Annual report requirement for registered management investment companies.
270.30a-3	Annual report requirement for totally-held registered investment company subsidiary of registered investment company.
274.101	Form N-1R—Annual report of registered management investment company under the Investment Company Act and the Exchange Act.
275.202-1	Exclusion of certain persons who offer investment advice to their employer-sponsored employee benefit plans.
275.206(3)-1	Exemption of investment advisers registered as broker-dealers in connection with the provision of certain investment advisory services.
Rules Scheduled for Review in 1985	
230.234—230.237.	Miscellaneous exemptive rules under the Securities Act.
239.12—239.13.	Forms S-2 and S-3 for registration of securities of development stage corporations.
239.145	Notice of proposed sale of securities pursuant to Rule 237.
240.3a12-5	Exemption of certain investment contract securities from Exchange Act Sections 7(c) and 11(d)(1).
240.3b-1	Definition of "listed."
240.7c2-1	Exemption from Exchange Act Section 7(c)(2) of certain securities exempted from registration or admitted to trading on exchanges exempted from registration.
240.10b-16	Disclosure of credit terms in margin transactions.
240.11d1-1	Exemption of certain securities from Exchange Act Section 11(d)(1)
240.12a-1—240.12a-6.	Exemptions from exchange registration.
240.12b-1—240.12b-36.	Regulation 12B—Registration and reporting rules.
24C.12f-1—240.12f-6.	Rules pertaining to unlisted trading privileges.
240.12g-1—240.12h-4.	Registration of over-the-counter securities.
240.15b10-1—240.15b10-7; 240.15b10-12.	Rules pertaining to SECO broker-dealers.
240.15c2-4	Transmission or maintenance of payments received in connection with underwritings.
240.17a-7	Records of non-resident brokers and dealers.
240.17d-1	Examination for compliance with applicable financial responsibility rules.
240.17d-2	Program for allocation of regulatory responsibilities.
240.17Ab-2	Registration of clearing agencies.
240.19c-1	Off-board agency transactions.
249.27—249.28.	Forms 27 and 28—Unlisted trading privileges.
249.208a	Form 8A—Registration of additional securities.
249.208b	Form 8B—Successor to issuer of registered securities.
249.210	Form 10—General form for registration of securities pursuant to Section 12(b) or 12(g) of the Exchange Act.
249.214	Form 14—Application for registration of certificates of deposit issued by a committee.
249.216	Form 16—Application for registration of voting trust certificates.
249.460	Form 8—Amendment to application or report.
249b.200	Form CA-1—Registration of clearing agency.
270.11a-1	Definition of "exchange" for purposes of Section 11 of the Investment Company Act.
270.12d3-1	Conditional exemption of certain purchases or acquisitions of securities from the prohibitions of Section 12(d)(3) of the Investment Company Act.
270.13a-1	Exemption for change of status by temporarily diversified company.
270.14a-1	Use of notification pursuant to regulation E under the Securities Act.
270.14a-2	Exemption from Section 14(a) of the Investment Company Act for certain registered separate accounts and their principal underwriters.
270.14a-3	Exemption from Section 14(a) of the Investment Company Act for certain registered unit investment trusts and their principal underwriters.
270.30a-2(b)	Annual report requirement of unit investment trusts which are currently issuing securities.
274.10	Form N-8A—Notification of registration.
274.12	Form N-8B-2—Registration statement for unit investment trusts which are currently issuing securities.
274.14	Form N-8B-4—Registration statements for face amount certificate companies.
274.102	Form N-30A-2—Annual report of unit investment trusts which are currently issuing securities.
274.214—274.217.	Forms for service of process on non-resident investment advisers and non-resident general partners of investment advisers.

17 CFR	Title
275.0-2	Consent to service of process to be furnished by non-resident investment advisers and by non-resident investment general partners or managing agents of investment advisers.
275.0-3	References to rules and regulations.
275.0-4	General requirements of papers and applications.
275.0-5	Procedure with respect to applications and other matters.
275.0-6	Incorporation by reference in applications.
275.205-1	Definition of "investment performance" of an investment company and "investment record" of an appropriate index of securities prices.
275.205-2	Definition of "specified period" over which the asset value of the company or fund under management is averaged.
279.2	Form ADV-W—Notice of withdrawal from registration as investment adviser.
279.4—279.7	Forms for service of process on non-resident investment advisers and non-resident general partners of investment advisers.

Rules Scheduled for Review in 1986

17 CFR	Title
229.1—229.20-12.	Regulation S-K—Standard instructions for filing forms under the Securities Act and the Exchange Act.
239.16b	Form S-8—Securities offered to employees pursuant to certain plans.
239.29	Form S-15—Registration of securities to be issued in certain business combination transactions.
240.0-4	Non-disclosure of information obtained in the course of examinations and investigations.
239.61	Form SR—Report of sale of securities and use of proceeds therefrom.
240.3b-3	Definition of "short sale."
240.10a-1	Short sales.
240.10a-2	Requirements for covering purchases.
240.10b-10	Confirmation of transactions.
240.11Ab2-1	Securities information processors—description of form application and amendments.
240.12d1-1—240.12d1-8.	Rules pertaining to certification by exchange.
240.13a-1—240.13b-2.	Rules regarding periodic reports by issuers.
240.15b1-2	Statement of financial condition to be filed with application for registration as a broker or dealer.
240.15b10-11.	Fidelity Bonds.
240.15c2-5	Disclosure and other requirements when extending or arranging credit in certain transactions.
240.15d-1—240.15d-17.	Regulation 15D—Reports of registrants under the Securities Act.
240.17Ad-8	Securities position listings.
240.24b-2	Non-disclosure of information filed with the Commission and with any exchange.
249.308A	Form 10-Q—Quarterly Report.
249.310	Form 10-K—General form of annual report.
249.1001	Form SIP—Application for registration as securities information processor.
270.0-1—270.0-5; 270.0-7.	Rules of general application.
270.6e-2	Exemptions for certain variable life insurance separate accounts.
270.17e-1	Brokerage transactions on a securities exchange.
270.17f-1	Custody of securities with members of national securities exchanges.
270.17f-2	Custody of investments by registered management investment company.
270.17f-3	Free cash accounts for investment companies with bank custodians.
270.17f-4	Deposits for securities in securities depositories.
270.17g-1	Bonding of officers and employees of registered management investment companies.
270.27d-2	Quarterly report of issuers of periodic payment plan certificates subject to the surrender right of Section 27(d) of the Investment Company Act.
270.27e-1	Requirements for notice to be mailed to certain purchasers of periodic payment plan certificates sold subject to Section 27(e) of the Investment Company Act.
270.27f-1	Notice of right of withdrawal required to be mailed to periodic payment plan certificate holders and exemption from Section 27(f) of the Investment Company Act for certain periodic payment plan certificates.
270.30a-2(c)	Annual report requirement of unincorporated management investment companies currently issuing periodic payment plan certificates.
274.13	Form N-8B-3—Registration statement for unincorporated management investment companies currently issuing periodic payment plan certificates.
274.103	Form N-30A-3—Annual report for unincorporated management investment companies currently issuing periodic payment plan certificates.
274.127d-1	Form N-27D-1—Accounting of segregated trust account.
274.127d-2	Form N-27D-2—Issuers of periodic payment plan certificates subject to the surrender right of Section 27(d) of the Investment Company Act.
274.127e-1	Form N-27E-1—Notice to periodic payment plan certificate holders of 18-month surrender rights with respect to periodic payment plan certificates.
274.127f-1	Form N-27F-1—Notice to periodic payment plan certificate holders of 45-day withdrawal right with respect to periodic payment plan certificates.
274.13	Form N-8B-3—Registration statement of unincorporated management investment companies currently issuing periodic payment plan certificates.
274.103	Form N-30A-3—Annual report of unincorporated management investment companies currently issuing periodic payment plan certificates.
274.301	Form N-6EI-1—Notification of claim of exemption of certain separate accounts of insurance companies funding certain variable life insurance contracts pursuant to 270.6e-2.
274.302	Form N-27I-1—Notice of right of withdrawal and refund for variable life insurance contract-holders required pursuant to 270.6e-2.
274.303	Form N-27I-2—Notice of withdrawal right and statement of charges for variable life insurance contract-holders required pursuant to 270.6e-2.

Rules Scheduled for Review in 1987

17 CFR	Title
240.15b-8-2	Disqualification based on association or exchange disciplinary action.
240.15c2-4	Transmission or maintenance of payments received in connection with underwritings.
240.15c2-7	Fictitious over-the-counter quotations.
240.17a-10	Report on income and expenses.
240.17a-13	Quarterly security counts to be made by certain exchange members, brokers and dealers.
240.19d-1—240.19d-3.	Rules pertaining to disciplinary actions by self-regulatory organizations.
240.24b-1	Documents to be kept public by exchanges.
240.24b-3	Information filed by issuers and others under Exchange Act Sections 12, 13, 14 and 16.
270.8b-1—270.8b-32.	Rules relating to registration statements filed pursuant to Section 8 of the Investment Company Act.
270.8c-1	Previously filed material.
270.10f-2	Exercise of warrants or rights received on portfolio securities.
270.19a-1	Written statement to accompany dividend payments by management companies.
270.19b-1	Frequency of distribution of capital gains.
270.20a-1	Solicitation of proxies, consents and authorizations.
270.20a-2	Information pertaining to investment adviser and investment advisory contract.
270.20a-3	Information as to certain transactions.
270.23c-2	Call and redemption of securities issued by registered closed-end companies.
270.24b-1—270.24f-2.	Investment company rules relating to registration statements filed pursuant to the Securities Act.

Rules Scheduled for Review in 1988

17 CFR	Title
239.4	Form C-2—Registration statement for certain types of certificates of interest in securities.
239.5	Form C-3—Registration statement for American certificates against foreign issues and for the underlying securities.
239.6	Form D-1—Registration statement for certificates of deposit.
239.7	Form D-1A—Registration statement for certificates of deposit issued by issuer for securities called for deposit.
239.18	Form S-11—Registration statement for securities of certain real estate companies.
239.19	Form S-12—Registration statement for American Depository Receipts issued against outstanding foreign securities.
239.25	Form S-13—Registration statement for voting trust certificates.
240.13d-1—240.13d-7.	Regulations 13D and 13G pertaining to beneficial ownership.
240.13d-101	Schedule 13D.
240.13d-102	Schedule 13G.
240.13e-1	Purchase of securities by issuer.
240.13e-3	Going private transactions.
240.13e-100	Schedule 13E-3.
240.15a8-1	Proceedings under Section 15A(k)(2) of the Exchange Act.
240.17a-9; 240.17a-12; and 240.17a-16.	Reports by market-makers.
240.17a-11	Supplemental current financial and operational reports to be made by certain exchange members, brokers and dealers.
240.19c-1	Qualified non-member market-makers.
249.621	Form X-17A-11—Information required pursuant to Rule 17A-11.
270.6c-1	Exemption for subsidiaries organized to finance the foreign operations of domestic companies.
270.6c-3	Exemptions for certain registered variable life insurance separate accounts.
270.6c-4(T)	Temporary exemption for certain money market funds and other persons and companies.
270.6c-5(T)	Temporary exemptions for certain money market funds and certain affiliated persons thereof.
270.6d-1	Exemption for certain closed-end investment companies.
270.8f-1	Form for application by certain registered investment companies for orders declaring that such companies have ceased to be investment companies as defined by the Investment Company Act.
270.30f-1	Filing of statements pursuant to Section 30(f) of the Investment Company Act.
274.202	Form 3—Initial statement of beneficial ownership of securities.
274.203	Form 4—Statement of changes in beneficial ownership of securities.
274.218	Form N-8F—Application by certain registered investment companies for order pursuant to Section 8(f) of the Investment Company Act declaring that such a company has ceased to be an investment company.

Rules Scheduled for Review in 1989

17 CFR	Title
231 Release 33-4936.	Registration Statement Guide 60—Preparation of registration statements relating to interests in real estate limited partnerships.
239.18	Form S-11—Registration statement for certain real estate companies.
240.11a-1—240.11b-1.	Regulation of floor trading and specialists.
240.11a1-1(T)—240.11a2-2(T).	Rules pertaining to exchange trading.
240.13e-4	Tender offers by issuers.
240.13e-101	Schedule 13e-4—Tender offer statement pursuant to Section 13(e)(1) of the Exchange Act and Rule 13e-4 thereunder.
240.14d-1—240.14f-1.	Regulations 14D and 14E—Disclosure requirements and minimum time for tender offers.
240.15Bc7-1	Availability of examination reports.
240.17a-5	Reports to be made by certain brokers and dealers.
240.17a-20	Monitoring effect of competitive commission rates.

17 CFR	Title
249.508	Form U-4—Personnel form to be filed by registered brokers and dealers not members of a registered national securities association or associated persons of such brokers and dealers.
249.617	Form X-17A-5—Information required of certain brokers and dealers.
270.17d-2	Form for report by small business investment company and affiliated bank.
270.18f-1	Exemption from certain requirements of Section 18(f) of the Investment Company Act for registered open-end investment companies which have the right to redeem in kind.
270.23c-1	Repurchase of securities by closed-end companies.
270.27a-1	Conditions for compliance with and exemptions from certain provisions of Section 27(a)(1) and Section 27(h)(1) of the Investment Company Act for certain registered separate accounts.
270.27a-2	Exemption from Section 27(a)(3) and Section 27(h)(3) of the Investment Company Act for certain registered separate accounts.
270.27a-3	Exemption from Section 27(a)(4) and Section 27(h)(5) of the Investment Company Act for certain registered separate accounts.
270.27c-1	Exemption from Section 27(c)(1) and Section 27(d) of the Investment Company Act during annuity payment period of variable annuity contracts participating in certain registered separate accounts.
270.27d-1	Reserve requirements for principal underwriters and depositors to carry out the obligations to refund charges required by Section 27(d) and Section 27(f) of the Investment Company Act.
270.27d-2	Insurance company undertaking in lieu of segregated trust account.
270.27g-1	Election to be governed by Section 27(h) of the Investment Company Act
270.27h-1	Exemptions from Section 27(h)(4) of the Investment Company Act for certain payments.
270.28b-1	Investment in loans partially or wholly guaranteed under the Servicemen's Readjustment Act of 1944, as amended.
274.51	Form N-18F—Notification of election pursuant to 270.18f-1.
274.200	Form N-17D-1—Report filed by small business investment company (SBIC) registered under the Investment Company Act and an affiliated bank, with respect to investments by the SBIC and the bank, submitted pursuant to paragraph (d)(3) of 270.17d-1.
274.201	Form N-23C-1—Statement by registered closed-end investment company with respect to purchases of its own securities pursuant to Rule 23c-1 during the last calendar month.
Rules Scheduled for Review in 1990	
240.0-1; 240.0-2; 240.0-4; 240.0-6; and 240.0-8.	Rules of general application.
240.15Ba1-1; 240.15Ba2-1—240.15Ba2-2; 240.15Ba2-4—240.15Ba2-6; and 240.15Bc3-1.	Rules pertaining to municipal securities dealers.
240.19b7-1; 240.19c5-6; 240.19c3-1; and 240.31-1.	Miscellaneous rules governing proceedings under the Exchange Act.
240.15Aa-1; 240.15Aj-1.	Rules pertaining to a national or affiliated securities association.
240.17a-1; 240.17a-3—240.17a-4; 240.17a-8; and 240.17a-21.	Rules pertaining to certain records to be made and preserved by broker-dealers or self-regulatory organizations.
249.801—249.803.	Forms X-15AA-1, X-15AJ-1 and X-15AJ-2—Forms pertaining to a national or affiliated securities association.
249.1100; and 249.1110.	Forms MSD and MSDW—Application for registration and notice of withdrawal from registration as a municipal securities dealer.
270.7d-1	Specification of conditions and arrangements for Canadian management investment companies requesting order permitting registration.
270.16a-1	Exemption for initial period of directors of certain registered accounts from requirements of election by security holders.
270.17j-1	Prevention of certain unlawful activities with respect to registered investment companies.
270.22e-1	Exemption from Section 22(e) of the Investment Company Act during annuity payment period of variable annuity contracts participating in certain registered separate accounts.
270.30b1-1—270.30b1-2.	Rules relating to quarterly reports to the Commission.
270.30d2-1; 270.30e-1; 270.30e-2.	Rules relating to reports to shareholders.
270.32a-1	Exemption of certain companies from affiliation provisions of Section 32(a) of the Investment Company Act.
270.32a-2	Exemption for initial period from vote of security holders on independent public accountant for certain registered separate accounts.
270.45a-1	Confidential treatment of names and addresses of dealers of registered investment company securities.
270.57b-1	Exemption for downstream affiliates of business development companies.
270.60a-1	Exemption for certain business development companies.
274.108	Form N-1Q—Quarterly report of registered management investment companies.

Any rule or form adopted after the date of this release will be reviewed by the Commission within ten years of its adoption if such rule or form is found to have a significant economic impact on a substantial number of small entities.

III. Rules To Be Reviewed During the Next 12 Months

As required by 5 U.S.C. 610(c), the following is a list of the rules the Commission plans to review during the next 12 months.[4]

17 CFR	Rule description
210.1-02(v); 210.3-01—210.3-05; 210.3-07—210.3-16; 210.3A-02(a); 210.3A-03; 210.3A-05; 210.4-08(e); 210.5-04; 210.12-04.	Regulation S-X, of which these rules are a part, governs the form and content of financial statements filed with the Commission. These particular rules relate to requirements for (i) various separate financial statements, and (ii) pro forma financial statements under certain circumstances. The rules were considered necessary and were adopted to provide investors with additional useful financial information when consolidated financial statements were considered insufficient.
210.6-01—210.6-34; 210.7-01—210.7a-08; 210.9-01—210.9-05.	Articles 6, 7, 7A and 9 of Regulation S-X specify the specialized form and content of financial statements required of management investment companies, unit investment trusts, face amount certificate investment companies, employee stock purchase, savings and similar plans, insurance companies and banks and bank holding companies. These rules are needed to assure that investors in these entities are provided with useful financial information. Legal Authority: The rules in Regulation S-X have been adopted pursuant to authority in Sections 6, 7, 8, 10 and 19(a) of the Securities Act, Sections 12, 13, 14, 15(d) and 23(a) of the Exchange Act, Sections 5(b), 14 and 20(a) of the Holding Company Act and Sections 8, 30, 31(c) and 38(a) of the Investment Company Act.
230.146	Rule 146 provides that transactions involving the offer and sale of securities shall be deemed not to involve any public offering within the meaning of Section 4(2) of the Securities Act if they are part of an offering which meets all the conditions of the Rule. The rule was adopted in an effort to identify with certainty the circumstances in which the private offering exemption is available. Legal Authority: Section 4(2) and 19(a) of the Securities Act.
230.240	Rule 240 provides a conditional exemption from registration for limited offers and sales of small dollar amounts of securities by small, closely-held businesses. Rule 240 is needed by and particularly beneficial to the small local issuer who is seeking funds from friends and relatives. Legal Authority: Sections 3(b) and 19(a) of the Securities Act.
230.242	Rule 242 exempts certain corporate issuers from the registration provisions of the Securities Act for transactions involving offers and sales of a limited amount of securities to an unlimited number of accredited investors and 35 non-accredited persons. Rule 242 was considered needed by small issuers and adopted by the Commission to alleviate some of their concerns regarding certain problems in complying with Rule 146. Legal Authority: Sections 4(2) and 19(a) of the Securities Act.
230.251–230.264; 239.90–239.96.	These rules and associated forms comprise Regulation A, a general exemption from the registration requirements of the Securities Act. Regulation A provides a method by which a variety of different types of issuers may issue a limited amount of securities without the necessity of filing a registration statement under that Act. Regulation A appears to be needed and particularly beneficial to start-up companies and smaller issuers. Legal Authority: Sections 3(b) and 19(a) of the Securities Act.
230.400–230.494.	Regulation C consists of these 74 rules which govern the mechanics of securities registration under the Securities Act. The rules are necessary to facilitate efficient registration of securities offerings since they provide a centralized compendium of rules governing the Securities Act registration process. Legal Authority: Sections 19(a) of the Securities Act.

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[4] As indicated in Part I of this release, the Commission is conducting a review of its rules which is broader in scope than that required by the RFA. Thus, inclusion of a rule in this listing and brief description of rules to be reviewed in the next 12 months does not imply that the rule has already been determined to have a significant economic impact on a substantial number of small entities.

17 CFR	Rule description
239.11	Form S-1 is the registration form used when no other form is authorized or prescribed. Form S-1 is a necessary component of the standardized registration process. Legal Authority: Sections 7, 10 and 19(a) of the Securities Act.
239.26; 239.27.	Forms S-7 and S-16 enables issuers which are already subject to the continuous reporting requirements of Sections 12(b) or 15(d) of the Exchange Act to use shorter and less detailed registration forms than would otherwise be allowed. Form S-16, in addition, allows substantial incorporation by reference from previously filed Exchange Act documents. The forms are necessary to minimize burdens of registration disclosures on issuers when information is already available in the marketplace. Legal Authority: Sections 6, 7, 10 and 19(a) of the Securities Act.
239.28	Form S-18 is an optional form for the registration of securities to be sold to the public which can be used by certain issuers for an aggregate cash price not to exceed $5,000,000. Form S-18 is needed to provide simplified registration and reporting procedures for small businesses. Legal Authority: Sections 6, 7, 8, 10 and 19(a) of the Securities Act.
239.146	Form 146 is required to be filed with the Commission when offerings are made in reliance on Rule 146. Form 146 is needed by the Commission to gather certain information on the use of Rule 146. Legal Authority: Sections 4(2) and 19(a) of the Securities Act.
239.240	Form 240 is required to be filed with the Commission when sales of securities are made in reliance on Rule 240. Form 240 is needed by the Commission to gather certain information on the use of Rule 240. Legal Authority: Sections 3(b) and 19(a) of the Securities Act.
239.242	Form 242 is required to be filed with the Commission for the purpose of reporting sales of securities made in reliance on Rule 242. Since Rule 242 was adopted by the Commission on an experimental basis, Form 242 is needed by the Commission to collect empirical data which will provide a basis for further rulemaking action by the Commission. Legal Authority: Sections 3(b) and 19(a) of the Exchange Act.
240 3a40-1	Rule 3a40-1 designates those rules which are financial responsibility rules for the purposes of the Securities Investor Protection Act of 1970 ("SIPA"). The need for the designation, and thus the rule, is to clarify the circumstances in which the Securities Investor Protection Corporation ("SIPC"), pursuant to Section 5 of the SIPA, may seek a protective decree on behalf of customers and defines the authority of self-regulatory organizations to examine SIPC members, pursuant to Section 13 of the SIPA, for compliance with the financial responsibility rules. Legal Authority: Sections 3, 15(c)(3), 17(a), and 23(a) of the Securities Act.
240.15b5-1	Rule 15b5-1 extends the effective date of the cancellation or revocation of a broker or dealer's registration for six months for purposes of applying certain sections of the SIPA to customer claims arising prior to the date of revocation or cancellation. This six-month extension is needed to allow SIPC to protect customers who assert claims against a broker-dealer after the broker's or dealer's registration has been terminated. Legal Authority: Sections 15(b) and 23(a) of the Exchange Act.
240.15b10-10.	15b10-10 prohibits broker-dealers who are not members of a registered national securities association from distributing or selling shares of an open-end investment company on the basis of brokerage commissions received, demanded, or promised. Non-member broker-dealers are also prohibited from executing fund portfolio transactions on the basis of their sales of fund shares. The rule is comparable to subsection (k) under Section 26 of Article III of the Rules of Fair Practice of the NASD, which is intended to regulate the reciprocal brokerage practices of investment company managers. Rule 15b10-10 ensures that member and non-member broker-dealers are subject to similar rules concerning reciprocal brokerage practices. Legal Authority: Sections 15(b) and 23(a) of the Exchange Act.
240.15c2-11	Rule 15c2-11 generally provides that it shall be a fraudulent, manipulative and deceptive practice for a broker or dealer to publish any quotation for a security unless it has specified financial and other information concerning the issuer and the security. The rule is needed to protect investors who otherwise might be induced to purchase the security on the basis of inadequate information. Legal Authority: Sections 15(c)(2), 17(a), and 23(a) of the Exchange Act.
240.17Ac2-1; 249b.100.	Rule 17Ac2-1 requires a transfer agent for which the Commission is the appropriate regulatory agency to file an application for registration with the Commission on Form TA-1 and to update certain information on the form when that information becomes inaccurate, misleading or incomplete. This rule and form prescribe the procedures to be followed by those persons applying for registration as transfer agents with the Commission. The information on the form is needed, to determine, among other things, whether the Commission should allow an application for registration to become effective or should deny, accelerate or postpone registration. Legal Authority: Sections 2, 17, 17a and 23(a) of the Securities Act.
240.19h-1	Rule 19h-1 requires that any self-regulatory organization that takes any action to condition or limit membership, participation or association with a member or access to services based on a statutory disqualification, as defined in Section 3(a)(39) of the Exchange Act, where the self-regulatory organization and the parties involved agree on the conditions or limitations, provide the Commission with notice and certain information related to the action. This rule is needed to provide a routine mechanism for the Commission to review such actions taken by self-regulatory organizations. Amendments to Rule 19h-1 have recently been proposed in Securities Exchange Act Release No. 17615 (March 10, 1981) (46 FR 17218). Legal Authority: Sections 2, 15, 15A, 17, 17A, 19 and 23(a) of the Securities Act.
250.7(a)	Rule 7(a) provides an exemption from the status of a "gas utility company" or an "electric utility company" for companies primarily engaged in other businesses whose annual gross utility revenues do not exceed $100,000. The rule is necessary to avoid subjecting companies which are not primarily utility companies to possible regulation as gas or electric utility companies under the Holding Company Act. In connection with its review, the Commission may propose an amendment raising the permitted utility revenue to $1,000,000 per annum. Legal Authority: Holding Company Act Section 2(a)(3) and 2(a)(4).
270.5b-1	Rule 5b-1 defines the term "total assets" and is needed to simplify the computations which a management investment company must make in order to determine whether it is properly classified as "diversified" or "non-diversified" under the Investment Company Act. Legal Authority: Sections 5(b), and 38(a) of the Investment Company Act.
270.5b-2	Since the term "security" is defined in the Investment Company Act to include a guarantee of a security, the securities of "any one issuer" include guarantees of securities of other companies by such issuer. This situation presents difficult problems for the investment company in the valuation of guarantees and guaranteed securities in determining whether its investments meet the diversification standards of the Investment Company Act. Rule 5b-2 is needed to alleviate this difficulty and provides, in effect, that diversified investment companies may invest in guaranteed securities on the basis that the guarantor is not the issuer of the securities, provided that the aggregate value of its investment in the direct issues of a company and the issues guaranteed by such company does not exceed 10% of the value of the total assets of the investment company. Legal Authority: Sections 5(b) and 38(a) of the Investment Company Act.
270.6b-1	Section 6(b) of the Investment Company Act provides that the Commission may exempt employees' securities companies, upon application, from the provisions of the Act to the extent such exemption is consistent with the protection of investors. Rule 6b-1 affords any employees' securities company which files an application for permanent exemption under Section 6(b) of the Investment Company Act a temporary exemption pending final determination of the application. The rule is needed to avoid temporarily subjecting applicants to the provisions of the Investment Company Act while their applications for permanent exemption are pending consideration by the Commission. Legal Authority: Sections 6(b), 6(c) and 38(a) of the Investment Company Act.
274.11; 239.15	Form N-1 is an integrated registration statement form by which open-end management investment companies register their securities under the Securities Act, register as investment companies under the Investment Company Act, or both, and update their Investment Company Act registration statements annually pursuant to rule 8b-16 under the Investment Company Act. Registration of securities under the Securities Act by an open-end management investment company is a necessary step in the public offering of such securities by the company. Similarly, an investment company must register under the Investment Company Act in order to conduct any business in interstate commerce. The combined form is needed to minimize the burden of compliance with the two Acts. Legal Authority: Sections 5, 7 and 10 of the Securities Act, and Sections 7 and 8 of the Investment Company Act.
275.204-1—275.204-3	Rule 204-1—This rule prescribes the time at which amendments to an investment adviser's Form ADV must be filed and is needed to maintain current investment adviser information. Rule 204-2—This rule describes the books and records an investment adviser must maintain and preserve pertaining to its advisory activities. The rule is needed to facilitate periodic review of these records by Commission personnel which is a major element of the Commission's investment adviser regulatory program. Rule 204-3—This rule generally requires investment advisers to deliver to their clients and prospective clients a written disclosure statement describing the adviser's background and business practices. The rule also requires investment advisers annually to deliver or offer to deliver such a statement to existing clients. This rule is needed to ensure that investment advisers provide existing and prospective clients certain relevant information which should be useful in selecting an investment adviser or continuing an advisory relationship. Legal Authority: Sections 203, 204 and 206(4) of the Advisers Act.

17 CFR	Rule description
279.1; 279.3...	Form ADV—This form is the application for registration with the Commission as an investment adviser. It contains basic information about the investment adviser and is needed by the Commission to determine whether registration should be granted. Form ADV-S—This form is an annual report investment advisers must file with the Commission. It is needed by the Commission to determine whether an investment adviser is still engaged in advisory activities and where the investment adviser is located. Legal Authority: Sections 203 and 204 of the Advisers Act.

III. Public Comment

The Commission invites public comment relating to its periodic review plan or the list of rules it plans to review during the next 12 months.

By the Commission.

George A. Fitzsimmons,

Secretary.

June 24, 1981.

[FR Doc. 81-19110 Filed 6-26-81; 8:45 am]

BILLING CODE 8010-01-M

INITIAL REGULATORY FLEXIBILITY ANALYSIS

This initial regulatory flexibility analysis, which relates to the proposed amendments to Rule 242, 1/ has been prepared in accordance with 5 U.S.C. 603.

REASONS FOR PROPOSED ACTION

The Securities and Exchange Commission (the "Commission") is considering amendments to Rule 242 2/ which, if adopted, would allow certain issuers engaged in the mining business to rely on that Rule in the offer and sale of their securities.

Rule 242 was adopted by the Commission on January 17, 1980 (effective February 25, 1980) to exempt from the registration requirements of Section 5 of the Securities Act of 1933 (the "Act") 3/ certain securities offerings of no more than $2,000,000 pursuant to Section 3(b) of the Act. 4/ Serving as an experiment, Rule 242 is intended "as an effective means for issuers, particularly small issuers, to raise limited amounts of capital through unregistered offerings to the public consistent with the protection of investors." 5/ It was

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1/ Release No. 33-6300 (March 18, 1981) [FR].

2/ 17 CFR 230.242.

3/ 15 USC 77a *et seq.*

4/ On October 23, 1980, the Commission amended Rule 242(c) to specify a fixed dollar limitation of $2,000,000 on the amount that can be sold thereunder. Release No. 33-6250. Prior to this amendment, the Rule 242 offering size limitation coincided with, and was defined by, the Section 3(b) limitation. That latter limitation was increased from $2,000,000 to $5,000,000 by Section 301 of the Small Business Investment Incentive Act of 1980 signed into law on October 21, 1980.

5/ Release No. 33-6180 (January 17, 1980). Rule 242 does not, however, exempt any issuer relying on it from the anti-fraud provisions of the Act, other provisions of the federal securities laws or any provisions of applicable state laws.

adopted by the Commission in order to address the problems encountered by issuers in using alternative exemptions from registration.

In particular, commentators at the Commission's small business hearings 6/ indicated that existing exemptive rules, particularly Rules 146 7/ and 240 were 8/ not especially helpful to small businesses.

Rule 146 was designed to provide objective standards on which an issuer may rely in claiming the exemption from registration provided in section 4(2) of the Securities Act for transactions not involving any public offering. The commentators at the hearings consistently stated, however, that Rule 146 raises compliance problems for smaller issuers which render the availability of the exemption uncertain. Specifically, Rule 146 requires the issuer to make a subjective determination as to the sophistication of each offeree and each purchaser. In addition, the commentators were uncertain whether Rule 146 compels compliance with current staff guidelines and interpretations as to the requirements of forms and schedules, in those instances in which the issuer must furnish offerees the same information "as would be required to be included" in a particular registration statement or on Schedule I of Regulation A. The Rule's provisions as to omissions of immaterial information, moreover, may make technical violations likely.

6/ In May and April 1978 the Commission conducted 21 days of public hearings held in six cities across the country regarding the impact of its rules and regulations on the ability of small businesses to raise capital and the financial and other effects on small businesses of its disclosure policies under the federal securities laws.

7/ 17 CFR 230.146.

8/ 17 CFR 230.240.

Rule 240 also was criticized, although it does not contain offeree or purchaser sophistication standards or a mandatory disclosure requirement. Commentators claimed that Rule 240 is of limited utility because it is available only for offerings of $100,000 or less in 12 months by an issuer whose securities are owned beneficially by not more than 100 persons. The utility of Rule 240 is diminished further by the Rule's prohibition against the payment of commissions for the solicitation of purchasers.

Rule 242 was adopted to provide small business with an alternative exemptive provision which overcomes certain problems encountered in utilizing Rule 146 and Rule 240. Since Rule 242 was in the nature of an experiment, however, it was available to a limited class of "qualified issuers" as defined in the Rule. 9/ In light of comparable amendments to Form S-18, 10/ to which the disclosure requirements of Rule 242 are tied, as well as the absence of any substantial or unique administrative or enforcement problems with the Rule, the Commission believes it is appropriate to consider expanding the availability of the Rule to certain mining companies. The consequence of taking no action with regard to this proposal will be to deny these issuers the availability of a valuable exemption from the Commission's registration requirements.

9/ 17 CFR 230.242(a)(5)

10/ Release No. 33-6299 (March 19, 1981) [FR]

OBJECTIVE

The objective of the amendments to Rule 242 is simply to extend to certain mining companies the advantages of utilizing the provisions of that Rule to raise limited amounts of capital through unregistered offerings of securities.

LEGAL BASIS

The Commission is proposing the amendments to Rule 242 of the Securities Act of 1933 pursuant to Sections 3(b), 4(1) and 19(a) of that Act.

[Secs. 3(b), 4(1), 19(a), 48 Stat. 75, 77, 85; sec. 209, 48 Stat. 908; 59 Stat 167; sec. 6, 68 Stat. 684; sec. 12, 78 Stat. 580; 84 Stat. 1480; sec. 308(a)(1), (2) (3), 90 Stat. 56, 57; sec. 18, 92 Stat. 275; sec. 2, 92 Stat. 962; (15 U.S.C. 77c(b), 77d(1), 83s(a))]

SMALL ENTITIES SUBJECT TO RULE

This rule proposal will affect any corporation: (a) which is incorporated under the laws of the United States or Canada or any State or Province thereof; (b) has or proposes to have its principal business operations in the United States, if a domestic Corporation, or in Canada or the United States if a Canadian corporation; and (c) which engages or intends to engage in significant mining operations.

The number of entities which will be subject to Rule 242 as a result of this amendment, if adopted, is not readily determinable due to: (1) the lack of available data and statistics regarding the number of small mining companies which will be affected; and (2) the fact the amendment may foster the development of many new mining ventures.

Although an estimate is not possible, the Commission believes that, since Rule 242 is a small issuer exemptive provision, the impact on the entities involved would be favorable and significant.

REPORTING, RECORDKEEPING AND OTHER COMPLIANCE REQUIREMENTS:

Companies offering securities pursuant to the Rule will be obligated to furnish "non-accredited" purchaser the same kind of information as is specified in Part 1 of Form S-18. 11/ If "accredited" persons are involved in the same transaction, they too must receive this written information. If the issuer files reports pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934, it may satisfy the informational requirements of the Rule by furnishing purchasers with its most recent annual report on Form 10-K 12/, definitive proxy statement and any other reports filed since the filing of the Form 10-K. In addition, such issuer must also provide the information required by Items 1, 2, 3, and 14 of Part 1 of Form S-18. The information furnished must also include certified financial statements for a period of one year.

An issuer relying on Rule 242 will also be required to file a Form 242 13/ notice with the Commission. The purpose of Form 242 is to collect empirical data which will provide a basis for further action by the Commission.

11/ 17 CFR 239.28.

12/ 17 CFR 239.310.

13/ 17 CFR 239.242.

It is anticipated the Form 242 notice will require the attention of management. With respect to the informational requirements, the Commission believes the services of management, a certified public accountant, as well as those of an attorney familiar with the securities laws will be required.

It is important to note, however, that the proposed amendments, if adopted, will not, by themselves, impose any new reporting, recordkeeping or other compliance requirements on any entities. Only if an issuer elects to rely on Rule 242 will that issuer be subject to such requirements.

OVERLAPPING OR CONFLICTING FEDERAL RULES

The Commission believes Rules 146 and 240 overlap, to some degree, with Rule 242, but the features and operation of these rules are such that they provide useful alternatives to issuers.

SIGNIFICANT ALTERNATIVES

As previously stated, Rule 242 was adopted by the Commission in response to problems encountered by small issuers in complying with or utilizing Rule 146 or Rule 240. In this regard the Commission believes Rule 242 does in fact reduce the uncertainties associated with Rules 146 and 240 and thus has greatly benefited small issuers in the capital formation process. 14/

Pursuant to Section 603 of the Regulatory Flexibility Act the Commission considered the following alternatives: (i) the establishment of differing compliance or reporting requirements or timetables that take

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14/ See: Rule 242, A Monitoring Report On The First Six Months Of Its Use. U. S. Securities and Exchange Commission, Directorate of Economic and Policy Analysis, December 1980.

into account the resources available to small entities; (ii) the clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities; (iii) the use of performance rather than design standards; and (iv) the establishment of an exemption from coverage of the rule, or any part thereof, for small entities.

None of these alternatives, however, is appropriate, in the Commission's view, since the proposed amendments to Rule 242 will have the effect of extending the availability of an exemptive provision to an additional class of small entities.

SOLICITATION OF COMMENTS:

The Commission encourages the submission of written comments with respect to any aspect of this initial regulatory flexibility analysis. Such written comments will be considered in the preparation of the final regulatory flexibility analysis, if the proposed rule is adopted. Persons wishing to submit written comments should file four copies thereof with George A. Fitzsimmons, Secretary, Securities and Exchange Commission, Room 892, 500 North Capitol Street, Washington, D. C. 20549. All submissions should refer to File No. S7-875 and will be available for public inspection at the Commission's Public Reference Room, Room 6101, 1100 L Street, N. W., Washington, D. C. 20549.

Mr. **Ireland**. Thank you very much.

I would like to ask Congressman Skelton, the gentleman from Missouri, to lead off, as he has another appointment in a few minutes.

Mr. **Skelton**. Mr. Commissioner, I am not sure I have heard an act of Congress criticized so concisely as you have here today in a long time. It is of little added value. It is not cost effective. It is an internal burden and slows down the process of deregulation. I suggest to you, sir, it is this attitude that is reflected by the paper that you have read, that is the very reason this had to become law, because there were those that, in our Federal Government, that seemed to want to pass rules and regulations without concern for the small businessman without hearing from those of us that represent them.

It is interesting to note that you all are on a deregulation course now toward small business, is that correct?

Mr. **Longstreth**. Yes, sir, it is.

Mr. **Skelton**. When did that begin?

Mr. **Longstreth**. A number of years ago. As I said——

Mr. **Skelton**. It began several years ago?

Mr. **Longstreth**. Yes, sir.

Mr. **Skelton**. And you have not completed it yet?

Mr. **Longstreth**. Well, it is an ongoing process.

Mr. **Skelton**. Well, now, we passed this in the law last year; is that not correct?

Mr. **Longstreth**. Yes, sir.

Mr. **Skelton**. And if you have been in the process of deregulating small businesses for a number of years, why did you not make that known, that you were getting out of the small business burdensome regulation business?

Mr. **Longstreth**. Well, we did make it known. In fact, as I said in the testimony, the SEC's actions that had been taken since 1977 or 1978 were used as an illustration of what agencies who were sensitive to the needs of small business could do in the way of deregulation. That is reflected in the legislative hearings of both the House and the Senate. So we have been trying to do this, and we will continue to do it.

Mr. **Skelton**. Can you document these activities that you have just referred to?

Mr. **Longstreth**. Certainly.

Mr. **Skelton**. Would you do that in writing for us?

Mr. **Longstreth**. I documented some of the steps we have taken in my testimony.

Mr. **Skelton**. Are there others?

Mr. **Longstreth**. There were others that preceded that, and I think we could go back and list them.

Mr. **Ireland**. I think you probably should.

Mr. **Skelton**. Why do you not do that for the record, sir.

Mr. **Longstreth**. Certainly.

[The information follows:]

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

October 22, 1981

The Honorable Andrew P. Ireland, Chairman
Subcommittee on Export Opportunities and
Small Business Problems
Small Business Committee
U.S. House of Representatives
B363, Rayburn House Office Building
Washington, D.C. 20515

Re: The Regulatory Flexibility Act

Dear Chairman Ireland:

During my testimony before your Subcommittee on October 20, 1981, Congressman Skelton requested a list of all rulemaking and other efforts by the Commission designed to assist small businesses that were not covered in my testimony.

Before responding to his specific request, I would like to take this opportunity to emphasize that the Commission fully supports the concept of regulatory flexibility to remove unnecessary regulatory burdens on small businesses, consistent with our statutory mandate of investor protection. Having checked further on the matter, I believe that the facts demonstrate that the Commission has taken positive steps to alleviate the burdens of small businesses and specifically has complied fully with the provisions of the Regulatory Flexibility Act. In this connection, as you know, the Small Business Administration's Chief Counsel for Advocacy, when he testified before the Subcommittee, stated that "... the SEC has made major efforts in regulatory reform on behalf of the small business community. We believe that the comprehensive nature and the timeliness of their approach is one which should be established by all agencies whose rulemaking affects small businesses and small entities." 1/ He also praised our compliance with the Act by saying "... the thorough review undertaken by the Commission epitomizes the initiative that all agencies should be taking in the area." 2/ In addition, I find that the Commission has maintained an excellent working relationship with the SBA, as evidenced by the joint research projects and joint publications we have undertaken in an effort to identify and address the concerns of the small business community.

1/ Statement of Frank S. Swain, Chief Counsel for Advocacy, U.S. Small Business Administration, before the Subcommittee on Export Opportunities and Special Small Business Problems, U.S. House of Representatives, October 7, 1981, p. 43.

2/ *Id*. p. 45.

The following presents a brief discussion of the Commission's significant initiatives designed to ease the impact of the federal securities laws upon small business and to facilitate venture capital formation. A chronology of the Commission's rulemaking efforts targeted to small business is attached as Appendix I. The chronology demonstrates that the Commission has, since late 1977, continuously developed initiatives to assist small issuers.

The Commission's focus on the problems of small business began with the recommendation of the Advisory Committee on Corporate Disclosure 3/ that public hearings be held to elicit comments on the problems experienced by small businesses in complying with federal securities regulations. The Advisory Committee Report was received on November 3, 1977, and on December 14, 1977, the Commission announced that it would hold public hearings concerning the effects of its rules and regulations on the ability of small businesses to raise capital and the impact on small businesses of the disclosure requirements under the securities acts. 4/ These hearings were held between April 12, 1978, and May 18, 1978 in cities throughout the country.

Based on the hearings and other available information and suggestions, the Commission, during September 1978, adopted revisions to Rule 144. Rule 144 sets down provisions applicable to sales of resticted securities, i.e. securities acquired in a private placement. The Commission relaxed Rule 144's quantitative resale restrictions, 5/ and proposed an amendment to Rule 144 which would permit certain persons who have held securities covered by the Rule for a five year period to sell such securities without any volume limitations. 6/ On March 5, 1979, the proposed amendments to Rule 144 were adopted to permit non-affiliates who have held restricted securities for three years to disregard the Rule's volume limitations on resale under certain circumstances. 7/

3/ Report of the Advisory Committee on Corporate Disclosure to the Securities and Exchange Commission, Committee Print 95-29, House Committee on Interstate and Foreign Commerce, 95th Cong., 1st Sess. (1977) at p. 511.

4/ Release No. 33-5889 (December 14, 1977) 13 SEC Docket 1094.

5/ Release No. 33-5979 (September 20, 1978) 15 SEC Docket 1109.

6/ Release No. 33-5980 (September 20, 1978) 15 SEC Docket 1114.

7/ Release No. 33-6032 (March 5, 1979) 16 SEC Docket 1261.

On April 3, 1979, the Commission adopted Form S-18, which provides certain small issuers with an alternative and effective means of raising limited amounts of capital through a registered public offering. 8/ Specifically, the narrative and financial disclosure requirements are substantially less burdensome than those which would otherwise be required if the general form, Form S-1, were used. Additionally, the Commission, for the first time, provided issuers registering securities on Form S-18 with the option of filing the registration statement at the appropriate regional office or at the headquarters office. A corresponding amendment was also adopted which allows such issuers to include the narrative and financial disclosure format of the Form S-18 in its initial Form 10-K annual report.

At the time of adoption the Commission announced its intention to monitor the use of Form S-18 for an appropriate period before determining whether its availability should be expanded. In March 1981, the Commission's Directorate of Economic and Policy Analysis published its second monitoring report and concluded that Form S-18 has substantially displaced Form S-1 as a means of registering small initial public offerings of common stock. 9/ The aggregate value of the securities registered since the adoption of the Form was reported to be $236,394,000 as of March 1981. Based on the relatively widespread acceptance of the Form and the absence of any significant disclosure or enforcement problems, the Commission expanded its availability to certain companies engaged in mining operations and included a new disclosure item applicable to such issuers. 10/ Finally, the Commission has under consideration certain revisions to Form S-18 which, if implemented, would expand its availability to non-corporate issuers and to issuers which engage or intend to engage in oil and gas related operations.

In June 1979, the Office of Small Business Policy was established within the Division of Corporation Finance. Since its inception this Office has served as a focal point of the Commission's small business rulemaking initiatives, has reviewed and commented upon the impact of rule proposals on small businesses, and has acted as liaison with Congressional committees, government agencies and other groups concerned with small business. This Office has also been responsible for monitoring the quality of disclosure included in Form S-18 offerings.

8/ Release No. 33-6049 (April 3, 1979) 17 SEC Docket 153.

9/ Form S-18: A Monitoring Report on the First 18 Months of its Use, U.S. Securities and Exchange Commission, Directorate of Economic and Policy Analysis, March 1981.

10/ Release No. 33-6299 (March 19, 1981) 22 SEC Docket 466.

On September 11, 1979, the Commission proposed Rule 242 as a small business limited offering exemption designed to provide such issuers with greater flexibility in raising capital without facing the uncertainty and more burdensome requirements associated with other such exemptions. 11/ In January 1980, the Commission adopted Rule 242, on an experimental basis and subject to monitoring, pursuant to Section 3(b) of the Securities Act. 12/ Of significance, the Rule introduces the concept of an accredited investor whereby an issuer need not prepare and furnish detailed disclosure documents provided that sales are made only to accredited persons. The Commission's Directorate of Economic and Policy Analysis, in a monitoring report published on Rule 242, 13/ stated that during the initial six months of its availability intended sales in reliance on the Rule aggregated $38,058,704 while effected sales aggregated $19,176,553, of which $15,126,149 were to accredited persons.

In cooperation with representatives of the venture capital industry and the staffs of the Congressional committees concerned with the securities laws, the Commission was active in the formulation of proposed legislation entitled "The Small Business Investment Incentive Act of 1980" [H.R. 7554]. Specifically, the legislative proposal recommended by the Commission included an increase in the Section 3(b) ceiling to $5,000,000 in order that the Commission would have greater flexibility in developing exemptions from registration, and an increase in the aggregate amount of securities that may be partially or totally exempt from the provisions of the Trust Indenture Act of 1939. These provisions were signed into law when the Small Business Investment Incentive Act was adopted on October 21, 1980. 14/ Additionally, the Commission worked closely with the White House staff to develop language for a new statutory exemption from the registration requirements of the Securities Act which ultimately was adopted as Section 4(6). Finally, the Commission in a cooperative effort with the Congressional committee staff members and others involved in the legislative process assisted in developing: (1) amendments to the Investment Company Act and Investment Advisers Act to provide, among other things, exemptive relief to certain private and public investment companies; and (2) a proposal to authorize the Commission to cooperate with representatives of the states to effect greater uniformity in federal-state securities matters, including the development of a uniform exemption from registration for small issuers, and uniform securities forms and procedures. This proposal was ultimately adopted as Section 19 of the Securities Act.

11/ Release No. 33-6121 (September 11, 1979) 18 SEC Docket 287.

12/ Release No. 33-6180 (January 17, 1980) 19 SEC Docket 295.

13/ Rule 242: A Monitoring Report on the First Six Months of its Use, U.S. Securities and Exchange Commission, Directorate of Economic and Policy Analysis, December 1980.

14/ Pub. L. No. 96-477 (October 21, 1980).

In response to the Trust Indenture Act amendments effected by the Incentive Act, the Commission adopted interim rules on October 23, 1980, which established dollar limitations on the amount of debt securities which may be offered without indenture qualification. 15/ These interim rules are to remain in effect until December 31, 1981. The Commission intends to adopt the final rules prior to that date.

In December 1980, the Commission, mindful of newly adopted Section 4(6), its expanded authority under Section 3(b), the Congressional intent underlying Section 19(c), and the views expressed by commentators at the Small Business Hearings, announced in an advance notice release that it was considering the inter-relationship among certain exemptions from the registration provisions of the Securities Act, and the utility of such exemptions as they relate to the capital formation needs of small business. 16/

After considering the comments received on the foregoing concept release, the Commission on August 7, 1981, proposed for comment new Regulation D governing the offers and sales of certain securities without registration under the Securities Act. 17/ This action, as noted in my testimony, represents an effort by the Commission to coordinate the various limited offering exemptions and to streamline the existing requirements applicable to private offers and sales of securities. It is important to note that proposed Regulation D is intended to serve as a basis for a uniform state-federal limited offering exemption. The Commission has for the first time worked closely with the North American Securities Administrators Association in order to develop the uniform state-federal limited offering exemption envisioned by Section 19(c) of the Securities Act. Both the Commission and NASAA believe the uniform limited offering exemptive scheme will reduce the burdens on small issuers by eliminating, in most instances, the multiplicity of regulations imposed at both the state and federal levels.

On June 2, 1980, the Commission authorized the publication of an advance notice release announcing that it was considering the advisability of classifying issuers under the Exchange Act so that defined classes of smaller issuers might have modified reporting and other requirements. 18/ This effort was begun, in part, in response to the commentators at the Small Business Hearings who noted that the cost and burdens of compliance with Exchange Act reporting requirements is relatively greater for smaller companies than for larger issuers, which may in turn inhibit the

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15/ Release No. 33-6249 (October 23, 1980) 21 SEC Docket 242.

16/ Release No. 33-6274 (December 23, 1980) 21 SEC Docket 1013.

17/ Release No. 33-6339 (August 7, 1981) 23 SEC Docket 446.

18/ Release No. 34-16866 (June 2, 1980) 20 SEC Docket 241.

capital raising efforts of new and growing enterprises. In furtherence of this effort, the Commission, on October 20, 1981, proposed for comment a new rule, and rule amendments, which would exempt a class of smaller issuers from the registration and reporting provisions of the Exchange Act. 19/ Specifically, the rules, if adopted, would provide that: (1) issuers with less than $3,000,000 of total assets would not be required to register under Section 12(g) of the Exchange Act; and (2) issuers registered under Section 12(g) or subject to Section 15(d) of the Exchange Act who have less than 500 shareholders would be relieved of further reporting obligations if their assets fell below $3,000,000 for three consecutive fiscal years. These standards were developed in order to effect an inflationary adjustment to the Section 12(g) $1,000,000 asset figure established in the Exchange Act amendments of 1964. The Commission contemplates that the proposal may affect approximately 450 issuers, or roughly 5% of those currently complying with the Exchange Act.

I would now like to expand upon some of the answers that I gave during my testimony to questions raised by the members of the Subcommittee and the Staff Director.

With respect to assistance provided by the SBA, on October 13, 1981, the SBA furnished us with a copy of a report prepared by A.E. Osborne Associates entitled "The Relationship between Asset Size and the Number of Shareholders for SEC Reporting Companies." We will carefully consider the information included in this report in adopting the definitions of small business and small organization for purposes of the Regulatory Flexibility Act, and also in connection with any action we might take with respect to classifying companies by size for purposes of complying with certain of the requirements of the Exchange Act.

It is important to note that while deregulatory efforts designed to facilitate venture capital formation and to ease the regulatory burden upon small issuers should be continued, the Commission cannot lose sight of its statutory mandate to protect investors and foster continued confidence in the securities markets. Deregulatory efforts which cause a loss of investor confidence could do serious long-term harm to the interests of small business and the capital formation process. I find that the Commission has adopted, in the past, a deregulatory program which has properly considered and balanced these objectives.

Of course, the views expressed above represent the experience of only one agency. The Commission does not purport to represent the views of any other agency. In addition, the views expressed above do not necessarily represent the views of the Administration. Our views are being simultaneously transmitted to the Office of Management and Budget, and we will inform you of any advice received from that Office concerning the relationship of our views to the program of the Administration.

19/ Release No. 34-18189 (October 20, 1981).

I would be most pleased to answer any further questions you, or the Subcommittee, may have.

Sincerely,

Bevis Longstreth

Bevis Longstreth
Commissioner

cc: The Hon. Ike Skelton
    Mr. Stephen P. Lynch

APPENDIX I

U.S. SECURITIES AND EXCHANGE COMMISSION SMALL BUSINESS INITIATIVES

Release No. 33-5889 December 14, 1977 13 SEC Docket 1049	The Commission announced that it would hold public hearings concerning the effects of its rules and regulations on the ability of small business to raise capital and the impact on small business of the disclosure requirements under the securities acts.
Release No. 33-5975 September 8, 1978 15 SEC Docket 1052	An amendment was adopted to Rule 146 to allow the use of Regulation A type financial information for Rule 146 offerings of up to $1,500,000.
Release No. 33-5977 September 11, 1978 15 SEC Docket 1054	The Commission raised the ceiling on the amounts of securities which may be sold under Regulation A within a twelve-month period from $500,000 to $1,500,000.
Release No. 33-5979 September 20, 1978 15 SEC Docket 1109	Rule 144's quantitative resale restrictions were relaxed.
Release No. 33-5980 September 20, 1978 15 SEC Docket 1114	Amendments to Rule 144 were proposed which would permit certain persons who have held securities covered by the rule for a five year period to sell such securities without any volume limitation.
Release No. 33-6032 March 5, 1979 16 SEC Docket 1261	The proposed Rule 144 amendments, referenced above, were adopted with modification to permit non-affiliates to disregard the Rule's volume restrictions on resale under certain circumstances.
Release No. 33-6049 April 3, 1979 17 SEC Docket 153	The Commission adopted Form S-18, on an experimental basis, setting in place simplified registration and reporting requirements for small issuers.
June 1979	The Office of Small Business Policy was established within the Division of Corporation Finance to serve as the focal point for the Commission's small business rulemaking initiatives.
Release No. 33-6075 June 1, 1979 17 SEC Docket 798	Regulation A was amended to allow the use of a pre-effective selling document provided that the participating underwriters are broker-dealers registered under the Securities Exchange Act of 1934.
Release No. 33-6121 September 11, 1979 18 SEC Docket 287	The Commission proposed Rule 242 as a small business limited offering exemption designed to provide such issuers with greater flexibility in raising capital without facing the uncertainty and more burdensome regulations associated with other such exemptions.

Release No. 33-6136 October 16, 1979 18 SEC Docket 662	The Commission published an interpretive release announcing that it would not take enforcement action against issuers utilizing Form S-18 to offer $1,500,000 or less of debt securities without filing and qualifying the trust indenture under the Trust Indenture Act of 1939.
	During 1980, the Office of Small Business Policy worked with the White House Conference on Small Business Financing, the Inter-Agency Task Force on Domestic Policy Review of Industrial Innovation, and the Joint SEC-NASAA Committee on Small Business Capital Formation in pursuing efforts to alleviate, to the degree consistent with the protection of investors, problems of small business in raising capital.
Release No. 33-6180 January 17, 1980 19 SEC Docket 295	The Commission adopted Rule 242, described above, in final form pursuant to Section 3(b) of the Securities Act.
Release No. 34-16866 June 2, 1980 20 SEC Docket 241	The Commission authorized the publication of an advance notice release announcing that it was considering the advisability of classifying issuers under the Exchange Act so that defined classes of small issuers might have modified reporting and other requirements. Copies of the release were mailed to over 1,000 entities to stimulate comment.
Release No. 33-6214 June 19, 1980 20 SEC Docket 390	The Commission proposed for comment certain amendments to the disqualification rule of Regulation A in order that the enumerated disqualifications, which prior to the amendments lasted indefinitely, would terminate automatically after five years.
Release No. 33-6249 October 23, 1980 21 SEC Docket 242	In response to the Trust Indenture Act amendments occasioned by the Small Business Investment Incentive Act of 1980, the Commission adopted interim rules which established dollar limitations on the amount of debt which may be offered without indenture qualification.
Release No. 33-6274 December 23, 1980 21 SEC Docket 1013	An advance notice release was issued announcing that the Commission was considering the inter-relationship among certain exemptions from the registration provisions of the Securities Act and the utility of such exemptions as they relate to the capital formation needs of small business.

Release No. 33-6275 December 23, 1980 21 SEC Docket 1024	The Commission proposed a comprehensive revision and reformatting of the Regulation A disclosure provisions designed to codify disclosure standards which were being applied to Regulation A offerings, to provide specific disclosure requirements for different types of issuers and different types of offerings, and to assist the administration of uniform disclosure policies.
Release No. 33-6256 November 7, 1980 21 SEC Docket 523	In order to permit issuers to utilize Section 4(6) promptly after the enactment of the Incentive Act, the Commission adopted, on an interim basis, a notice-of-sales form to be used by issuers relying on the new statutory exemption.
Release No. 33-6299 March 19, 1981 22 SEC Docket 466	The Commission expanded the availability of Form S-18 to certain issuers engaged in mining operations and included a new disclosure item applicable to such issuers.
Release No. 33-6300 March 19, 1981 22 SEC Docket 473	The Commission proposed to expand the availability of Rule 242 to issuers engaged, or to be engaged, in mining operations.
Release No. 33-6301 March 19, 1981 22 SEC Docket 474	Form 4(6), referenced above, was adopted in final form.
Release No. 33-6321 June 11, 1981 22 SEC Docket 1234	The proposed revisions to Rule 242, referenced above, were adopted in final form.
Release No. IA-766 July 21, 1981 23 SEC Docket 145	The Commission proposed amendments to Form ADV, the registration form for investment advisers, to eliminate the requirement that a balance sheet be filed by those advisers who do not have custody of customer funds or who require prepayment by customers of amounts in excess of $500. In a companion release the Commission provided guidance, in a simple question and answer format, regarding the proper completion of Form ADV.
Release No. 33-6339 August 7, 1981 23 SEC Docket 446	The Commission proposed for comment new Regulation D governing the offers and sales of certain securities without registration under the Securities Act. This action represents an effort to coordinate the various limited offering exemptions and to streamline the existing requirements applicable to private offers and sales of securities.

Release No. 33-6340 August 7, 1981 23 SEC Docket 482	The Commission adopted in final form the proposed revisions to the Regulation A disclosure requirements referenced above.
Release No. 34-18189 October 20, 1981	The Commission proposed for comment a new rule, and rule amendments, which would exempt a class of smaller issuers from the registration and reporting provisions of the Exchange Act.
	Two joint small business projects were completed by the Commission's Directorate of Economic and Policy Analysis in 1981: (1) a project with the Department of Commerce entitled the Experimental Technology Incentives Program (ETIP), commenced in 1977; and (2) a joint project with the SBA, commenced in 1979. The ETIP project examined the capital market environment for small issuers, particularly high technology issuers which often have venture capital financing, and encompassed a variety of studies related to small issuers which have been published as Capital Market Working Papers by the Commission's Directorate of Economic and Policy Analysis. The SBA project examined the role of regional brokers as underwriters of the initial public offerings of small businesses. A report on this study was published in August 1981.

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

OFFICE OF
THE COMMISSIONER

March 19, 1982

The Honorable Andrew P. Ireland
Chairman
Subcommittee on Export Opportunities
and Special Small Business Problems
House Small Business Committee
B-363 Rayburn House Office Building
Washington, D.C. 20515

Dear Chairman Ireland:

As you may recall, in my testimony before the Subcommittee on October 20, 1981, with respect to the Regulatory Flexibility Act, I noted the Commission's continuing concern with the problems faced by small business in attempting to comply with the federal securities laws. In this connection, I am pleased to be able to provide you with a recent release by the Commission announcing the adoption of Regulation D, which I believe will be of significant benefit to small issuers by permitting certain offers and sales of securities without registration under the Securities Act of 1933.

Included in the rule changes accomplished by Regulation D are the following:

(1) an expansion of the availability of some small offering exemptions for the first time so as to include issuers which are limited partnerships or are engaged in oil and gas operations.

(2) increases in the permissible sizes of offerings from $100,000 to $500,000 for non-reporting companies and, under appropriate circumstances providing additional investor protections, from $2-million to $5-million for both reporting and non-reporting companies.

(3) an easing of restrictions on issuers selling securities to a special class of investors, i.e., "accredited investors."

Proposed Regulation D was the subject of substantial commentary noting the significant benefits in the rule to capital formation by small issuers. The Small Business Adminstration in particular provided a thoughtful and helpful analysis of the proposed regulation which stated, in part, that:

> The action taken by the Commission to coordinate the various limited offering exemption provisions and to streamline requirements applicable to private offers and sales of securities is one which we have been advocating for several years. We welcome this most recent evidence of the Commission's desire to assist the capital formation needs of small firms.

I hope that this information is of interest to you and that you find it consistent with your own very strong support for the recognition by our federal government of the special needs of small business.

Please do not hesitate to call on me if you have any questions or if I can otherwise be of assistance.

Sincerely,

Bevis Longstreth

Bevis Longstreth
Commissioner

Enclosure

Mr. **Skelton**. Now, from your comments today you obviously do not like the new law; is that correct?

Mr. **Longstreth**. Yes, sir. I want to be very specific. We are speaking out of our experience with our agency and not on a governmentwide basis.

Mr. **Skelton**. Just answer my question. Do you like it or do you not like it?

Mr. **Longstreth**. We do not like it. We think it is unnecessary, burdensome, and not cost effective.

Mr. **Skelton**. But you are going to comply with it; is that not correct, sir?

Mr. **Longstreth**. We have been and will continue to comply with it.

Mr. **Skelton**. Thank you.

Mr. **Ireland**. Thank you, Mr. Skelton.

I think we have some fairly strong questions. Let me ask a few and then turn it over to some of my associates.

You know, as you answer these questions that we are going to ask you there are things in your testimony that engender the kind of attitude that Congressman Skelton expressed, and I would characterize your agency's attitude throughout your statement as one of holier-than-thou.

You pat yourself on the back for having done things that predate the act to help small business. If you really had been doing your job and were sensitive to small business and others we would not be having these hearings. So, before you take the attitude that everyone should accept the way you regulators do it on blind faith, I would call to your attention the only reason we are having these hearings or have the law is because of the mess that you got us into in the first place. Saying that you are attacking this problem means you are, by all logic, admitting that you were part of causing the problem in the first place.

I think we have a definite attitude problem here that is distressing to me, and obviously was distressing to the gentleman from Missouri.

I looked through your statement and I counted over 25 references, and there could have been probably another 10, in 11 pages of testimony that indicated inconvenience to your staff or the Commission in your operation. Your whole focus is on the inconvenience to your administration of your agency. Now that is not what we are here for.

Mr. **Longstreth**. May I comment on that?

Mr. **Ireland**. Not at this present time.

So I want you to know that we are not here to understand or hear that the inconvenience of your staff. First of all I would like for you for the record to tell us who is the Director of Economic and Policy Analysis? What is his name?

Mr. **Longstreth**. We have an acting director whose name is Jeffrey Davis.

Mr. **Ireland**. The job is so important that you have not appointed a permanent one?

Mr. **Longstreth**. We have been trying to find a permanent director who meets out other requirements and who would come to Washington and take that job. We need an economist, and it has been enormously difficult to find someone well qualified and willing to make the financial sacrifice. We had a permanent director before the acting director, but he has left.

Mr. **Ireland**. You have a lot of turnover going on but it really is not an important enough job to have somebody really working at it; is that correct?

Mr. **Longstreth**. No, the job is important, but it is very hard to attract somebody, who possesses the qualities that it would take to do the job as it should be done, to leave other types of pursuits and accept this position. We are actively, right now, seeking such a person, and any suggestions you have would be most welcome.

Mr. **Ireland**. Well, you know you have a lot of problems. We also have got a lot to do. You are again admitting one more time you cannot get your own agency's act in order to place people in jobs. You have got more problems than just regulatory flexibility!

Let me ask you this. Considering what you have said and my charge to you are you really saying to us that the overall implementation of the act throughout the Government will not be cost effective to the people of this country never mind your faceless bureaucrats in your office and your staff? Are you telling me and this committee that this will not be cost effective? Nowhere in this whole testimony have you referred to it being cost effective to small business.

Mr. **Longstreth**. What we are saying is that we do not think that the act is necessary for us to do the job——

Mr. **Ireland**. But you have not been doing the job up until now.

Mr. **Longstreth**. May I finish the sentence?

Mr. **Ireland**. Let us stop right there. By your own admission there is a problem out there that you have not been solving, and now you are saying that we are supposed to accept what you, having not fulfilled your responsibility and being insensitive to what is going on—so insensitive that we have to pass an act like this—you are saying the act is a burden on us.

You know your track record is not so good. Maybe this is the question I should ask. Why should we believe that you are so skilled at this that you should not have to do it in our way? What can you point to? Certainly nothing certainly in your testimony points out that you have done it well. You are telling us that no, you do not need this act, and we ought to let you do it your way. How can that be?

Mr. **Longstreth**. Well, let me go back. You said that my testimony suggested that the act was inconveniencing our staff.

Mr. **Ireland**. Over 25 times.

Mr. **Longstreth**. No, I do not think you will find the word inconvenience in there once.

Mr. **Ireland**. Well, you can construe almost anything in there as inconvenience.

Mr. **Longstreth**. What we are saying is that it is costing us time and energy to fill out the paperwork that this act requires.

Mr. **Ireland**. It is costing you. We want you to do that. That is what the people of this country are saying through this body, we want you to do it. You are coming back and saying, "Hey, we do not want to do it that way." And we are saying we do not like the way you have been doing it in the past.

Mr. **Longstreth**. We have a number of acts to administer, and you have given us one more act to administer, and we are administering them all. You asked us to come in and tell you how this law is working. I am telling you.

Mr. **Ireland**. No, you are not. You are not telling us how it is working for the small businessman. You are telling us how it is working for your cotton-picking agency down there and all those inconvenienced bureaucrats. That is all you have told us in this whole testimony. That is absolutely the only thing you have told us in the testimony. Not one time you have referred to whether doing this is cost effective or helpful for the small business out there. Not once in this testimony do you talk about whether it is cost effective for the guy that is being burdened with the actions of your agency. Do you deny that? Point out in your testimony where you said that?

Mr. **Longstreth**. What I have said is that it is not cost effective for us or for the small businessman.

Mr. **Ireland**. Were you not doing it by your own admission and patting yourself on the back? In a sense you are saying these are the things that we did in the past, but the only thing you do not say is you were doing those because you recognized there was a problem because of your other actions.

There are problems with small business and its relationship to your agency. You obviously recognize some of those because you were starting to try to do something about it. Then Congress told you we wanted it to be done better a different way and you do not like it. We do not like your attitude along that line, and we expect this to be changed.

Mr. **Longstreth**. I think that you will find that we have complied with the law in both its letter and its spirit, and if you find anyplace where we have not, we would welcome your pointing it out to us.

Mr. **Ireland**. I will point it out to you.

Mr. **Longstreth**. Please let me finish. You did ask us to come here and comment on how we, as one agency, view the effect of this act. We are telling you. Now you can get angry at us or dislike what we are saying, but we are giving you our judgment as best we can.

Mr. **Ireland**. I want you to do this at this point. You say you have done what we asked. You have not done what we asked. You have given us 11 pages of testimony of why it is inconvenient to your little nest that you live in down there to comply with the act. You have told us over and over again about inconvenience to your agency, the burden on the Agency and staff, etc. You have not addressed the fact of what this does to help the small businessman. That is what we are interested in. That is what we asked you to testify on, and you have not done that.

Mr. **Longstreth**. I have addressed that. I have said that what we are doing to help the small businessman who is subject to the laws we administer would be done by us even without this law.

Mr. **Ireland**. Well, we are saying that you have got a fundamental problem with the laws of the United States. You are not set up to do what you think. The people of this Nation elect people like us to tell you what they want. They do not want you sitting downtown there deciding what ought to be as you see it.

Mr. LONGSTRETH. We are complying with the law. We are carrying out the law. You asked what is the cost-benefit analysis on the law, and we think it is not helping us do the job you want us to do a whole lot.

Mr. IRELAND. You are looking through the wrong end of the telescope, sir. We do not care whether it is a burden on you. We really do not care because we do not think your agency cares. And besides that, that is not the point of this hearing. You have missed the boat entirely.

Now, we are going to pay a lot of attention to whether you are really complying with the law, but while we are doing it we do not want 11 pages of you patting yourself on the back for saying that you were doing something. We do not need to hear "Do not pass any laws; in our infinite wisdom, we can handle this by ourselves." Because if you were handling it so darn well you would not even be talking about it. So you admit that you have got a problem there, but you are saying, "Hey, do not bother us, we are so good we can do it ourselves."

Well, that is not what this law is all about, and this is wasted testimony, because you are answering questions that are not even being asked.

Mr. LONGSTRETH. Well, I thought we answered each of the questions you put.

Mr. IRELAND. Sure, you gave us some words, but if you will listen to what I am saying, you will know that you did not answer the main question. We are not concerned whether this is cost effective in the way you operate your agency. Maybe you had better shape up the administration of your agency. That might be part of your cost effectiveness.

Mr. Wyden.

Mr. WYDEN. Thank you very much, Mr. Chairman, and I, in every way, would like to associate myself with your remarks, because I find it staggering when we talk about only the burdens to Government, and not the burdens to the private sector. I would really like to follow up on my chairman's initiatives and ask a couple of questions about these so-called burdens. What is so burdensome about preparing advanced agendas? Does not the public have a right to know exactly what you are considering? Where is the burden there? It seems to me as my chairman pointed out that is the kind of information people in the private sector whom we have a responsibility to are interested in having.

Mr. LONGSTRETH. I think if the public is interested in this of course they are entitled to have it, and we are giving it to them.

Mr. WYDEN. How is it burdensome to you, sir?

Mr. LONGSTRETH. Because we have a very small staff. In the last 10 years there has been an explosion, as you well know, in the number of products and services in the financial area that we are expected to give our attention to under the six laws passed by Congress which we administer. Yet our staff has not grown, and, as you know, we are now faced with a 6.6-percent cut for fiscal 1982 and with a 12-percent across-the-board cut on top of that. We are facing a removal of 400 people from our staff——

Mr. WYDEN. But how would it not be cost effective?

Mr. LONGSTRETH. Please let me just finish explaining this. We are faced with a shrinking staff and a burgeoning set of substantive statutory responsibilities. This is very difficult for us to cope with and do the job that those six statutes expect us to do. So, when it comes to asking "how is it a burden?" Well, if a person is working on the reports that are required here, that person is not available to work on other matters.

Mr. WYDEN. How would it not be cost effective? Because it seems to me that the private sector needs those advanced agendas critically, and you say that it is a burden to you. How then is it not cost effective to do that, because the people we represent need that information critically?

Mr. LONGSTRETH. The reporting of the agendas, the 10-year look-forward?

Mr. WYDEN. Yes, sir.

Mr. LONGSTRETH. Well, I guess if they need that information critically then our doing it has to be cost effective. There is no other way for them to compile their own. I agree with that. But preparing the 10-year agenda was a one-time effort, and we have done that now. I think it is the ongoing work that is the real burden. What we are trying to say is that we do not think we needed this law to be concerned with burdens on small business.

Mr. WYDEN. Let us go a little further to periodic rule reviews. Now it seems to me that it is a fundamental thing that the small business sector has been asking for over the last few years. Now, were you doing this before reg flex?

Mr. LONGSTRETH. Yes, we were.

Mr. WYDEN. What is so burdensome about doing it now?

Mr. LONGSTRETH. Well, we are continuing to do it, but there is a difference between doing the substantive reviews on the one hand and doing the paperwork that is necessary on the other hand to comply with this act. Basically the act, I think, reflects—and perhaps as your chairman has said it is entirely justified—reflects a distrust in the people who are serving the same employer as you are, the public.

Now, there are two ways of responding to such a distrust. One is to get better public servants, and another is to build laws around them so that they have to comply with your intent.

Mr. WYDEN. I just think you have given us practically no information, No. 1, about how these kinds of initiatives are burdensome, how they are not cost effective. I will take one-third chance here. On page 3 you allege that regulatory procedural burdens delay favorable rulemaking proposals. It does not seem to me that we can know if a proposal is favorable if we do not analyze it and have public comment on it.

Now, how again is this burdensome? How is it not cost-effective, because we cannot even figure out if a proposal is favorable if you do not get analysis and comments?

Mr. LONGSTRETH. The Commission's Division of Corporation Finance has been active—both with very large blue ribbon, blue chip kinds of companies and with the very small companies—in trying to deregulate. If we are required to spend time doing an analysis for an action of the Commission that is deregulatory in nature solely to fulfill the letter of this act, it is going to slow us down because it just requires more work. That is the only point we are making.

Mr. WYDEN. But we are talking about a public comment from the small business community that we represent.

Mr. LONGSTRETH. But we publish the rules for comment—including small business comment—anyway.

Mr. WYDEN. But we do need public comment. Publishing rules is one thing, but again you come back to the fact as my chairman has pointed out again and again so correctly, as you said it slows you down, it is a burden to you. But we represent small business, and I think on the three questions that you have asked that our committee is interested in you have not shown how these proposals in rulemaking, public comment and the rest are not cost-effective, and it seems to me that that is destroying your credibility as you come up here and try to help us make this act work.

Mr. LONGSTRETH. Well, if we could get the deregulatory rules written out for public comment at an earlier date and adopted it would be more helpful to the people who are affected by the rule. So all we are saying is that this act slows us down in the deregulatory process that we are pursuing.

Mr. WYDEN. Thank you, Mr. Chairman.

Mr. IRELAND. What you are telling us right to our face is, as the gentleman from Oregon says, "do not take time to find out what the small business does because it slows us down." That leads right to what we were talking about. You have this arrogant idea that you are the only one that knows whether a regulation ought to be and you say, "Here is a deregulation proposal that we think is good and ought to be done and we are going to cram it in."

That is not what you are downtown for. The whole idea is whose choice is it? You are saying it slows down your way of regulating.

Maybe the American people and the small businessmen do not like your way of doing it, and a little humility along this line would go a long way. You are arrogantly telling us that talking to the public, in this case the small business public, gets in your way of doing things the way you think they ought to be done.

Well, I submit to you, you do not have infinite wisdom along that line. We all know it. And because of your lack of it that is why we have a problem right now.

Mr. Weber.

Mr. WEBER of Ohio. Thank you, Mr. Chairman.

Mr. Commissioner, have you received any help in the administration of this act from the Small Business Administration?

Mr. LONGSTRETH. With your permission I am going to ask for some help on that question from Alan Rosenblat of the Commission's Office of General Counsel.

Mr. ROSENBLAT. In doing our definitions—and there are more than 10 separate definitions because of the large variety of businesses that we regulate and the six different statutes—we did consult with the SBA before we put our definitions out for public comment and got their comments. In some respects we modified our proposed definitions, and then after we put the definitions out for comment we got additional comments from the SBA, and we have made some additional modification in the rules that will be soon presented to the Commission for final approval.

Mr. **Weber** of Ohio. Was any of that very helpful to you?

Mr. **Rosenblat**. I cannot evaluate that because that was done by our Director of Economic and Policy Research. I think it was probably somewhat helpful. I cannot say that it was overwhelmingly helpful, because we have special problems, and the universe of companies that we regulate are those that we have special expertise about. Indeed the SBA regulations concerning size standards were not appropriate for our use.

Mr. **Ireland**. Again let me interrupt my colleague. We are accepting that as only inappropriate from your view. Again you have got so many credibility gaps in what you say that I would not want anybody to construe at least that this member was accepting what you say along that line.

Mr. **Rosenblat**. With all respect, sir, the Small Business Administration did not have any disagreement about our not using their regulations. The only questions were some of the details of what we wanted to substitute.

Mr. **Weber** of Ohio. Well, you know, on page 3 of the prepared testimony there is the statement that the RFA requires the full analysis of the rulemaking proposal even if the impact on small business would clearly be deregulatory and favorable.

Then in the next paragraph it points out that that provision and that analysis can be waived, and I do not understand if it is so clear to you what the burden is on the agency and putting their heads together and waiving that requirement. You go on to the point about how you take it seriously and so forth, but I do not understand.

Mr. **Longstreth**. But it can be done only after doing the job of analysis. Is that not right?

Mr. **Rosenblat**. You do not have to do the full-scale regulatory flexibility analysis, but you do have to do a certain amount of analysis because the head of the agency must certify that the proposed rules, if adopted, would not have a significant effect on a substantial number of small entities. So you have to do some analysis in order for the chairman to be satisfied that his certification is supportable.

Mr. **Weber** of Ohio. And you are suggesting changing that to a finding that it does not have a significant negative economic impact?

Mr. **Rosenblat**. Yes, sir. Well, the law is somewhat ambiguous. Let me give you an example. Suppose you had a rule that had been in existence for some years that you were reexamining and you wanted to change one part of that to remove a burden completely. One might consider that that is something that would not impose a substantial economic impact on a substantial number of small entities in the sense that it does not add anything to their burden to take away that one part of the rule.

The legislative history, however, I believe indicates that there was some effort to have an exemption for deregulatory initiatives. But I think the attitude was the agencies might take that as a means of evading the statute by tinkering with the small detail perhaps and getting out of the process. So that the way the statute reads, if you have a rule and you get rid of half of it and get rid of a substantial burden, since the statute does not make any distinction between removing a burden, and that being a substantial economic impact, and adding a burden, which clearly is a substantial economic impact, you have to go through the analysis, at least the preliminary analysis. Literally, if you find that you are removing a substantial economic burden you still have to, as we read it—and we would be glad if you would tell us that is not the case—do a complete regulatory flexibility analysis even when you are removing an enormous burden on the small businessmen.

Mr. WEBER of Ohio. In spite of the fact there is a waiver provision.

Mr. IRELAND. If I may interject here, your whole premise and logic is that once again, just as the Commissioner himself did, you are making a judgment before study that it has that effect. So you prejudge the thing before you have an analysis. It rests on pretty sandy soil.

Mr. ROSENBLAT. I am making a very simple point. Suppose there is an extensive rule and tomorrow we decide to get rid of half of it. I think what Commissioner Longstreth has been saying is that were it not for the Regulatory Flexibility Act in a week we could put out a release that says we are revoking this rule.

Mr. IRELAND. Let me stop you right there. What we are saying is before you do that, regardless, you have made a judgment one way or the other about its impact. What we are saying is that we are tired of your prejudging what you are doing. It has not worked. It has been burdensome to small business, and we expect it to be stopped. That is what this act does. You are quite correct, but you make a judgment beforehand. What we want is for you to go through the process of this act and let the public have a chance to help decide that very question. Sometimes it might turn out that you are right, but you have a historic credibility gap along this line or you would not even be working on such subjects in the first place.

Mr. Commissioner, let me ask you, you make all this reference to burden and cost effectiveness. I would call attention to page 6 where you talk about all these other burdens that have been placed on you. You talk about the Equal Access to Justice Act. You are actually saying that gets in your way?

In the first place the law did not go into effect until October 1, and second, it only is triggered when some small businessman brings a suit, and you are telling me in your testimony that this is a great burden?

Mr. LONGSTRETH. No. In cumulative effect——

Mr. IRELAND. How can you accumulate anything on equal access to justice?

Mr. LONGSTRETH. Well, we have had to write rules relating to that law. We have had to analyze it, and we are going to comply with it. It became effective in October. We are making a small point, perhaps.

Mr. IRELAND. What you are doing is complaining about your workload. That is all.

Mr. LONGSTRETH. To some extent I guess we are complaining about the fact that we had——

Mr. IRELAND. We are here to talk about the effect on small business. We do not care about your workload.

Mr. LONGSTRETH. I am not complaining about it. We are trying to inform you because we carry out the laws that you pass.

Mr. IRELAND. You are informing us of your complaints, that is what you are doing. That is not what the point of this hearing is.

Mr. LONGSTRETH. Well, we answered all your questions.

Mr. IRELAND. Let me say this: They were unsatisfactory answers that you should be ashamed of, in my opinion. They do not address small business. They address your workday habits at the SEC.

Mr. Weber, do you have any more questions?

Mr. LONGSTRETH. You asked us have you encountered any major questions, either in implementing the law or specific requirements of the act. We tried to tell you what our problems are. I know you do not like our response. I have learned a lot from this session, and I appreciate your comments, and I understand what you are saying.

Mr. IRELAND. Well, it is unbelievable to me that you do not think that you need a law to tell you how to do these things in the face of the poor track record along this line. Then you come to us with a testimony that says nothing but how it is a burden to you.

Now we are here about small business. We are not here about your workday world downtown.

And I do not know where your testimony comes from, but somebody down there is looking through the wrong end of the telescope. The subject of this hearing is regulatory flexibility as it relates to small business, not regulatory flexibility as it relates to what some bureaucrat has to do and whether he likes it or not.

Let me conclude by suggesting in all due respect that either you or somebody in your agency take the patience and the time to sit and listen to what some of the other agencies in the Federal Government have done with the act with the same kind of financial constraints as you have. I think you will find that there are a lot of people doing a lot of things and looking at what the real problems are and trying to serve the people of this country instead of worrying about their own little fiefdom.

I have one further thing that the staff director would like to say.

Mr. LONGSTRETH. That is an excellent suggestion, sir.

Mr. LYNCH. A couple of things I would like to clarify for the record, Mr. Chairman.

Is it not true that your agency never had an Office of Small Business Policy until sometime in 1979?

Mr. LONGSTRETH. 1978.

Mr. LYNCH. They never had such an office before that?

Mr. LONGSTRETH. It did not.

Mr. LYNCH. How many employees does that Office have?

Mr. LONGSTRETH. The Office of Small Business Policy?

Mr. LYNCH. Yes, sir.

Mr. LONGSTRETH. Approximately 12.

Mr. LYNCH. How many are professionals?

Mr. BELVIN. Four or five attorneys and a financial analyst and a CPA.

Mr. LYNCH. How many employees does the agency have total at the present time?

Mr. LONGSTRETH. It has about 1,900.

Mr. LYNCH. Concerning the comments you made earlier, the Securities and Exchange Act, as I understand it, of 1934 set the basic asset size of $1 million until under the Regulatory Flexibility Act you took a look at those definitions. The SEC has never made an effort to change that definition, has it?

Mr. LONGSTRETH. That is the change that we are now going to look at today.

Mr. LYNCH. You recommend $2.5 million in your proposal.

Mr. LONGSTRETH. I do not know whether we ever looked at it.

Mr. LYNCH. The act was passed in 1934 and set that size limit. I do not believe your agency has ever taken a look at it until the Regulatory Flexibility Act passed, and then you came up with a proposal of $2.5 million in assets which was basically the $1 million figure from 1934 with an inflation factor; is that not correct?

Mr. LONGSTRETH. I believe that the act has been amended repeatedly. There were major amendments in 1965 and in 1975, and I would assume that this was looked at.

Mr. LYNCH. Your agency has never recommended a change, have they?

Mr. LONGSTRETH. I have just recently joined the Commission, and I do not know.

Mr. ROSENBLAT. We regarded the million as a judgment of Congress about size, and certainly, the Regulatory Flexibility Act, as we acknowledged in our testimony, caused us to focus on that.

Mr. IRELAND. Well, if you were interested in small business, you do not think it would be appropriate to call to Congress attention that inflation had taken place and maybe that ought to be increased for all these 47 years?

Mr. LONGSTRETH. Mr. Rosenblat indicates that the $1 million figure was established by Congress in 1964 rather than 1934. Even then maybe we should have reexamined this limit prior to now, and made a recommendation for a further change. I think the problem is for us that the substantive statutes that we have been implementing over the years talk in terms of protection of investors and so, whether it is big business or small business that is involved, our focus has not been so much on the size of the business as it has been on the protection of the investor.

Mr. LYNCH. That was the next point I was going to address.

Mr. ROSENBLAT. I am told that we did have an advisory committee in 1977 which looked into the question of whether the limits in the 1934 act should be changed.

Mr. IRELAND. And what did your advisory committee say in 1977?

Mr. ROSENBLAT. They probably made some recommendation that it be increased.

Mr. IRELAND. But you do not know?

Mr. BELVIN. I am Paul Belvin.

The advisory committee in 1977 did recommend that the Commission take a further look into the small business area. One specific area that it did recommend for further examination was whether or not the Commission should reduce Securities Exchange Act reporting for small businesses. That recommendation led to the small business hearings which we held in 1978. The Office of Small

Business Policy grew out of those hearings as well as that particular project which the Commission is looking at this morning——

Mr. **Ireland**. It has taken you 4 years to do this. You have not had a recommendation yet is what you are telling us.

Mr. **Belvin**. In June 1980, the Commission issued an advance notice of proposed rulemaking release, known generally as a concept release, seeking public comment on the concept and how best to structure relief for smaller enterprises from the Exchange Act reporting requirements.

Mr. **Ireland**. Studies, and concept releases. Have you made a recommendation? Is there anyone down there who cares? Based on the Commissioner's testimony, you are wringing your hands every day worried about small businesses.

Mr. **Rosenblat**. Mr. Chairman, excuse me. The concept release was to give the small businessman an opportunity to comment.

Mr. **Ireland**. It takes as long to do this as it does to build a nuclear plant. We all know that is too long. Can you all sit there and tell us, the American people, that attorneys with a great education and everything else, that it takes you 4 years and you still have not got a recommendation of what it ought to be?

Mr. **Belvin**. We will have a recommendation as of this morning if the Commission determines to publish for comment the proposals recommended by the staff.

Mr. **Ireland**. In all candor, you do not think that is just an awful long time, first to have taken 43 years to even think that it is a problem, and then to take 4 years to come up with a recommendation? Is this that weighty a thing? It seems to me if you are looking for time to be able to do these things you can knock off some of the fiddling around that took you 4 years to come up with a recommendation.

Mr. **Belvin**. Well, that particular project as I say was the subject of a concept release. We did not get back to the actual proposal as quickly as we would have liked because our attention was directed more into the capital formation area when we directed our resources into securities exemptive provisions which we thought would be of more pressing importance at the time.

Mr. **Lynch**. If I may continue, Mr. Chairman, on this same issue concerning a data base.

Is it not true that the SBA has gone so far as to prepare a study on this question by A. E. Osborne & Associates? They gave us a copy last week of the study on the question of asset size. They even were so willing to help you that they prepared this study and submitted it to your agency.

Mr. **Ireland**. You are not aware of it?

Mr. **Longstreth**. I am not aware of it, but I have only been with the Commission since July 29.

Mr. **Ireland**. I would submit that you had better stir around down there and find out what some of those people you are working with are doing.

Mr. **Belvin**. I have not been furnished with a copy of the report from SBA.

Mr. **Ireland**. Under the act you are supposed to be asking them their opinion. You cannot change the standard without asking them.

Mr. LYNCH. Well, we will provide you with a copy of this, because we were told that back in May you were given a draft copy of the study, and since then you have been given a final copy of the study.

For the record to point out the problem that we have I would like to read this. SBA went out and studied the question of asset size and they came up with a study that says:

> The number of companies representing $2.5 million in assets represent approximately 13.2 percent of all reporting companies and 1.3 percent of all shareholders of reporting companies. When we look at the $15 million asset category which SBA has proposed we see this group represents 37.8 percent of all reporting companies and only 4.2 percent of all shareholders.

Therefore, as you increase the number of firms receiving regulatory relief from 13 to 38 percent, the number of shareholders represented by these firms increases from 1.3 percent to only 4.2 percent.

I would say that SBA from these documents is trying to help you with the Regulatory Flexibility Act. The question is: Are you willing to accept the assistance?

Mr. LONGSTRETH. What is the name of that report?

Mr. LYNCH. The name of the report is "Toward a Definition of Small for Reporting Purposes Under the Securities Law," and it was prepared by A. E. Osborne & Associates.

We will get you a copy of all the letters that I have going back to May here to your agency from SBA.

That is all, Mr. Chairman.

Mr. IRELAND. The gentleman from Iowa has arrived. We are delighted to have you with us.

Mr. SMITH. Thank you.

Mr. IRELAND. Thank you for your testimony. You will recall that Mr. Skelton asked for some more information. I would say on my own behalf, you have not done your agency or my thoughts of what goes on in the Federal Government much good at all.

Thank you.

Our next witness is Mr. Timothy Ryan of the Department of Labor.

We appreciate your attendance, Mr. Ryan. I apologize for taking so long with the first witness. I hope that they will stay and listen to your testimony and that of some of the others. We appreciate it.

TESTIMONY OF T. TIMOTHY RYAN, SOLICITOR, DEPARTMENT OF LABOR; ACCOMPANIED BY DIANE BURKLEY, SPECIAL ASSISTANT FOR REGULATORY AFFAIRS TO THE SOLICITOR, AND PEGGY CONNERTON, REGULATORY ECONOMIST, OFFICE OF POLICY EVALUATION AND RESEARCH, DOL

Mr. RYAN. Mr. Chairman and members of the subcommittee; I appreciate the opportunity to appear before you today to report on the progress of the Regulatory Flexibility Act. Joining me this morning to my left is Peggy Connerton, who is a regulatory economist working for the Office of Policy Evaluation and Research. To my right is Diane Burkley, who is my special assistant and is responsible for keeping track of all regulatory activity in the Department of Labor.

The Department of Labor regards the improvement of the regulatory process as one of the most important challenges facing our Government.

As this subcommittee is aware, the sheer size and complexity of the Government's regulatory system has imposed an incalculable burden on the private sector. Today's employer is daily faced with the challenge of adeptly working his way through a minefield of complicated, confused, and often duplicative Government regulations. Excessive paperwork burdens, unnecessary governmental regulation, and obsolete regulatory requirements impose needless burdens on our citizens and pose a serious threat to the viability of the American business community. Overregulation has resulted in an unnecessary financial strain on the business community, higher prices for the American people, and a Federal regulatory system that has lost the respect of the public.

It was for this reason that, as soon as he took office, the President moved quickly to institute a full-fledged, broad-based program to require that both long- and short-term action be taken to bring about regulatory reform. The Regulatory Flexibility Act is part of the broad-based effort to insure that the regulatory process is truly responsive to public needs, that Government agencies take time to understand the real effects that their regulations will have, and that they ascertain whether the regulatory burdens they impose are justified.

Mr. Chairman, the Department of Labor views regulatory reform as one of its highest priorities. Consonant with the goals of the Administration and Executive Order 12291, which was issued by President Reagan shortly after he took office, the Department has moved promptly and decisively to review and revise its regulatory processes to establish a coordinated program for insuring compliance with the administration's regulatory reform objectives.

In this regard, the Department is coordinating the efforts of all its program agencies to insure that the costs and benefits of each regulatory action are closely examined before seeking to impose new burdens on the public. Existing regulations are being closely examined to determine whether they are responsive to today's needs. Outdated regulations will be revised or repealed.

As part of this overall effort, Mr. Chairman, the Department is also closely examining its regulations and regulatory processes to devise ways of avoiding inappropriate regulatory impact on small entities.

Small businessmen are vital to our economy, not only for the goods and services they provide, but because by their very presence, small business owners exemplify the theory and practice of the free enterprise system.

Regulations that pose needless burdens especially threaten the viability of small businesses, which have less resources available to comply with the regulatory obligations that are imposed.

This is why we take very seriously our responsibilities under the act. As part of our broad-based effort to improve the Department's regulatory process, we have initiated steps to particularly consider the needs of small businesses in conjunction with our regulatory programs. Steps have been taken to insure that we provide small businesses with direct notification of those proposed regulations of the Department that will substantially affect small entities. We are presently studying our semiannual regulatory agenda to establish improvements in the way it communicates to the small business community. Proposed and existing regulations are being closely scrutinized to determine the effect they will have on small entities. While much work remains to be done, great strides have been made by the Department to make its regulatory processes more responsive to the small business community.

More specifically, with regard to the Department's particular responsibilities under the Regulatory Flexibility Act, the following actions have been taken.

First, to insure that there is proper coordination and management within the Department on Regulatory Flexibility Act matters, two regulatory flexibility officers have been named by the Department. A representative from the Department's Office for Policy, Evaluation, and Research has been named as a regulatory flexibility officer to insure that the economic aspects of the Department's program are in full compliance with the act. Also, a representative from the Office of the Solicitor has been named as a regulatory flexibility officer to insure that the Department is in full compliance with the other legal mandates of the act.

Second, as required by the Regulatory Flexibility Act, the Department published on April 28 of this year its Regulatory Flexibility Act agenda. To underscore our commitment to the mandates of the Regulatory Flexibility Act, the Department made it a point to have its agenda published on time. The agenda was combined with the agenda required by Executive Order 12291, and it specifically identified those rules the Department expected to propose or promulgate that could have a significant economic impact on a substantial number of small entities. Public comment was invited on the agenda entries, and a copy of the agenda was sent to the Chief Counsel for Advocacy of the Small Business Administration. Also, to insure that small entities received proper notification of the Department's agenda, on the date of the agenda's publication, notice of the agenda was sent by the Department's Office of Information to thousands of publications that are likely to be received by small entities, such as business magazines and newspapers and trade and business organizations' publications. This same procedure will be followed upon the publication of the Department's next semiannual agenda, which we expect to issue by the end of this month.

Third, on June 30 of this year, the Department issued its 10-year periodic review plan. As with our semiannual agenda, we made it a point to have our 10-year plan published on time. Pursuant to the schedules set in the plan, the Department will review all of its existing rules which potentially impact on small entities to determine whether it is appropriate to modify or repeal them in order to lessen the regulatory impact on small entities. It is the Department's firm belief that the regular reevaluation of existing regulations is extremely important to insure that the goals of the act are carried out.

Fourth, the Department fully recognizes, Mr. Chairman, that we cannot be truly sensitive to the needs of the private sector unless we have the clearest possible understanding of the economic effects of our regulatory action.

As already noted, it is a simple fact that compliance with regulations hits small businesses harder. The ability to raise money in the capital markets is restricted and interest charges are higher. Fewer personnel and machines are available to sort through the paperwork jungle. The across the board approach to regulation often treats small business like large ones by mandating compliance strategies better suited to the circumstances of larger enterprises.

All of these factors render the economic analyses required by law the cornerstone to effective departmental implementation of the Regulatory Flexibility Act. The Department therefore takes this obligation seriously and has taken all steps to assure full compliance with its requirements in a way that will meet not only the letter but also the spirit of the law.

In determining whether a regulatory flexibility analysis is needed, all regulations are screened both by the agencies involved and by experienced departmental economists specially assigned for that purpose.

The Department also carefully reviews these analyses to assure that agencies have carefully addressed all of the relevant impacts affecting small businesses before proposals are issued. This process continues at the final rulemaking stage. To date, the Department has issued initial regulatory flexibility analyses covering proposed changes in three major regulatory programs—Davis-Bacon, Service Contract Act, and the affirmative action obligations of Federal contractors. We have also issued a final analysis on OSHA's noise standard. The Office of Advocacy in the SBA reviewed each of these analyses and recently pointed out our analyses in testimony before this subcommittee as indicative of the Labor Department's apparent interest in eliminating burdensome and costly regulations for small businesses. Several of these analyses played a role in setting different standards for large and small firms, for example, in setting the thresholds used to reduce the excessive paperwork burdens for small Federal contractors in meeting their affirmative-action obligations.

The Department is working to solve several problems that have arisen in the course of implementing the act. The most immediate and significant problem we faced was defining the terms significant impact on a substantial number of small entities. These terms, as you know, trigger the regulatory-flexibility-analysis requirement.

For example, the determination of significant economic impact is, by its nature, a matter about which there may be differences of opinion. The Department has adopted a broad concept of this term to include not only the increased cost to an industry but also the impact on competition, concentration, and paperwork. We have made it clear to our program agencies that they cannot avoid the requirements of the law by simply stating that regulations involve technical changes in recordkeeping requirements and hence do not have an economic effect.

Similar problems have been encountered with the definition of small entities given the diversity of Labor Department responsibilities. These responsibilities include programs as diverse as mine safety and health, employee benefit plans, and employment and training programs. In view of the variety of regulatory needs, agencies have the option to use SBA definitions or other definitions on a case-by-case basis provided the definition is clearly stated in the preamble and public comment requested. We will however continue to examine whether development of a single Department of Labor definition is feasible and appropriate.

The other program is, of course, scarcity of useful economic data and statistics on small entities. For example, in preparing most of our analyses, we do not believe that we have all the detailed data that we would like by firm size. We are working with our agencies and the SBA in identifying useful data sources for our analyses.

Finally, there is the problem of educating the staff personnel responsible for developing the new regulations and reviewing old ones in accordance with the mandates of the act. We are establishing a training program to insure our employees are fully aware of the Department's responsibilities under the act.

I am pleased to report, Mr. Chairman, that at this time the Department is in full compliance with the Regulatory Flexibility Act. I am also pleased to report that the Small Business Administration recently pointed to the Department of Labor's agenda and periodic review plans as excellent models for other agencies to follow and to the appointment of two high-level regulatory flexibility analysis officers as indicative of the importance which the Department attaches to the act. The SBA has also termed our recent certifications of no significant economic impact as exemplary and our regulatory flexibility analyses as commendable. SBA's overall assessment is that after some initial confusion, the Labor Department's record of compliance has moved from fair to very good and is to be given a B-plus rating.

However, I can assure you, Mr. Chairman, that we are not satisfied with this B-plus rating. The Department intends to make a concentrated and conscientious effort to continue to improve its regulatory process. While this will not be an easy task, I am confident that with time and hard work we can succeed.

This concludes my prepared statement. I would be pleased to answer any questions you may have.

Mr. IRELAND. Thank you very much, Mr. Ryan, for a very fine review. I am sure you know that we like that B-plus rating, plus your idea of making it even higher. We think that is just outstanding.

Let me say at the outset here that I realize that you went to a lot of trouble, you and other members of your staff, of changing an appointment this morning so that you could be here and we appreciate that.

One of the gentlemen who was a major, and I guess the world will never know who was the real major investigator in getting this act passed, was the gentleman from Iowa, Mr. Smith. I know it would be good to hear from him.

Mr. SMITH. Thank you, Mr. Chairman. I appreciate your calling on me at this time. I do not think there is any question about it, you are the major one, but several of us did do some work on this for a number of years.

I mentioned employee benefit plans. Specifically what have you done with regard to revising the paperwork that is required for employee benefit plans?

Mr. RYAN. Mr. Smith, you are talking specifically about the form that is required, the 5500?

Mr. SMITH. Right.

Mr. RYAN. At this present time and on a very candid basis, the Reagan administration has now been in office for approximately 9 months. We came in and we found approximately 27 regulations that had been issued between the election and inauguration, and we have been concentrating on those 27.

Right now, we are sitting down within the Department. Recently Mac Lovell was named our Under Secretary. We adopted internal departmental review procedures which deal specifically with the issue of reviewing regulations.

We are now undertaking a full review of items such as the ERISA 5500.

Mr. SMITH. In other words, you have not revised the form?

Mr. RYAN. No, sir.

Mr. SMITH. Let me just use that as an example. I was the author of the act in 1961 under which employers were only supposed to be required to just take the simple certificate and attach it to their actuarial evaluation they had already gotten as required by IRS and file it out in Silver Spring. By the time the Government got through implementing this law, all of these employee benefit plans had to hire actuaries to go through and get the information for a few uniform forms that were required.

Well, that disturbed me somewhat because that was not the intent at all, and we did some investigating. I found out that the source of that burdensome requirement was insurance companies. Insurance companies wanted the information on a uniform form and they wanted it in a handy form so that they could use it for their statistics. That was the reason why reporting requirements got so complicated, and it cost $1,000 a year for little employee benefit plans to get the information put together in that form, all for the benefit of the insurance companies.

Well, the law was changed and now we have this form 5500 and all those problems that go with it. But I find, disturbingly enough, about half of the information on that form does not serve the purposes of the law.

Now, it may serve someone's purpose. I think in some instances some of the information they are asking for was just put on there because they saw it on some other form, I think innocently; I do not think anybody really asked for it. They did not really ask themselves do we really need this information, but some of it still is a carryover of what happened when insurance companies came in and asked for all that information. And I would like to see you evaluate that form, that is not the only one in that department, but just as an example. If you are going to fulfill the requirements of this law, you should take a form like that one and go through it one item at a time and ask at each box, now do we need that information, and if we do need it, is it available from some other source, and I think you can reduce that form by at least half.

More importantly, I think that when you look at the kind of information you are asking for you should keep in mind, "Will this cost the person that is filling out the form to get this information, and if it will, is it worth while for everybody to have to get that kind of information?"

You know, we can have regulations that have high purposes and ideals and so forth, but when it is all over what really counts is getting those forms out one at a time, just one at a time and going down through them and seeing what is going on, and I would hope that you would do it with some of these forms soon. Apparently you have not done that with any of them yet.

Mr. RYAN. If I may comment on the 5500, it is a form that is required not only under the Department of Labor's enforcement aspect of ERISA but also by the Internal Revenue Service, and the Internal Revenue Service uses that form—from what I understand, anyway—in a very, very major fashion. The computers they have review every aspect of the form, and I would say if there were changes to be made in the 5500, and there may be, it is something that I have personally talked with the assistant commissioner who handles the ERISA program about because, as you said, it is a prime example of something that we should be able to sit down and ask ourselves the questions that you just posed, why do you need this, why do we need that.

As somewhat of an aside, it is an interesting commentary on essentially how the Government works—I am learning more about it; I have only been there 8 months now—but we looked at the unbelievable paperwork burdens created by the Davis-Bacon Act which essentially required all contractors to file with the Government weekly individual pieces of paper for every single individual who was working on a Federal contract in construction, and we reviewed that. We looked at the statute. We decided on a legal basis that we did not need that type of paper. We proposed the modification of that requirement.

The end of the story though is the shocking part of it. We asked the Bureau of Labor Statistics to go out and find out how the Government at large was using the paper that was being submitted under the Davis-Bacon Act. We found that the only thing that was happening with it was that it was being stored. We could not find any one, single agency in the Government that was using that type of paperwork that was being submitted. Yet we determined that the paperwork submitted under the Davis-Bacon Act came to approximately 7 percent of all the paperwork burden created by the Department of Labor, and no one was using it. So we are very, very sensitive.

Mr. SMITH. What have you done about it?

Mr. RYAN. We have eliminated it. We have proposed an elimination of it, I should say properly.

We are very sensitive to the concerns of this committee, and I feel that they are totally in synchronization with the administration's feeling that we have gone too far in regulations.

Mr. SMITH. Unfortunately about 5,000 of those employee benefit plans are already out of business due to ERISA and other things, but the least we can do is to try to reduce the unnecessary burden on those that still exist.

What we have done through this whole process really is to almost prohibit an employer from setting up its own employee benefit plans; they have to go to an insurance company and buy a plan for which there is a 30-percent loading charge, and any way you take it the intended beneficiaries get 30 percent less benefits. It was not necessary.

Thank you.

Mr. **Ryan**. If I may comment, because I think your point on the 5500 is a very, very good issue; it is something that I will look into after the hearing. In fact, I am meeting this afternoon with the Assistant Commissioner from IRS who handles ERISA, and we will sit down and start a fruitful discussion on reviewing that document. I am not sure there will be any changes, but at least we will look at it.

Mr. **Smith**. I appreciate your saying that. Keep in mind, if you are wondering where some of that request came from, go back to the insurance companies. That is where a lot of it came from.

Mr. **Ireland**. Thank you very much, Mr. Smith.

I might also point out when you are talking to the gentleman from the IRS that we hope to have the honor of his presence in late January or early February. What you will be doing is just giving him an idea of the kind of things we are interested in.

Mr. **Ryan**. Sometimes, Mr. Chairman, I think we should travel together everyplace we go.

Mr. **Ireland**. Mr. Weber.

Mr. **Weber** of Ohio. Mr. Ryan, can you give us any examples or can you cite any specific reduction in regulation as a result of the Reg. Flex. Act, or is it too early?

Mr. **Ryan**. I think we can. One of the things when we first came into office we sat down and the President asked us to freeze all of what we called midnight regulations. They were regulations that were issued between the election and the inauguration.

One had to do with broad changes in the Government's affirmative action program. We sat down with the staff, career Government employees, and we asked them whether the changes that were being made in the regulations were going to be helpful to the program at large, and after some thought they admitted that in large part they really could not do what they had been asked to do under the old regulations, and that the midnight regulations were only expanding their burden, and that they really could not achieve what everyone thought they should try to achieve. We said, "Who are we really interested in, and what are we really looking at? Are we trying to protect the greatest number of employees or are we trying to cover the universe as far as business is concerned?"

We concluded after these discussions that we could cover at least 75 percent of the employees that were previously covered by the written affirmative action plan requirement, yet reduce the number of companies by some 60 percent to 66 percent by making changes in the threshold. That decision was made primarily with small entities, small businesses in mind. It was made based on quite a bit of career Government employee input, and I think it is an excellent proposal.

Mr. **Weber** of Ohio. As a result of the Reg. Flex. Act or as a result of the President's Executive order?

Mr. **Ryan**. I would say that it was a combination of both. To say that the Reg. Flex. Act is driving this administration is an over-statement. To say that it is part of our program, it definitely is. And I think it is important that we try to sensitize the career Government employees that they have to be sensitive to the needs of different groups. Small business is one of those groups.

Mr. **Weber** of Ohio. Do you expect Reg. Flex. will be helpful in reducing duplicative Government regulation?

Mr. **Ryan**. I would say in coordination with the President's Executive order that it will be. If I may comment, though, sometimes, and I was here during the Commissioner's presentation, sometimes for individuals like myself and I am sure like the Commissioner, who is also new to the Government, it gets a little bit confusing when you sit down and you say OK, we want to take on this issue of cleaning up the regulatory morass. When you start getting into all of the different statutes that you have to deal with and Executive orders there is no doubt about it, it gets confusing.

Does the Regulatory Flexibility Act serve a purpose? And I have been very involved with the regulatory process for the last 9 months, and I am a member of the Vice President's task force, or working group. I would say definitely it does.

Mr. **Weber** of Ohio. Good. I was interested in the fact that you apparently do not feel that you have a sufficient data base about small business. In order to obtain that data base is it going to be necessary to impose a greater paperwork burden on the small businesses of the company, or can we accumulate that data with what we have already got?

Mr. **Ryan**. I am going to blame that on Peggy Connerton. This is Dr. Connerton on my left, who is the economist who works primarily on our regulatory program.

Ms. **Connerton**. I am surprised at how many data sources are available in the Government which are not currently being utilized. In many cases, they are not publicly available data sources. That is, they are not tabulated and published by the Bureau of Labor Statistics, but they are available to the public if they can find it and request it. Part of my job has been to go to BLS and to the different program agencies themselves to attempt to discern what kinds of data are available that can be distinguished by firm size.

It is certainly not our intent to go out and collect a massive data base, but rather to "mine" available data.

Mr. **Ryan**. If I can give you a practical response from my standpoint also, it appears that the Government has available almost everything it needs. It is just a matter of finding out where it is and if anyone has ever put it into a digestible form.

Mr. **Weber** of Ohio. Thank you, Mr. Chairman.

Mr. **Ireland**. Just one further question about the data base, more specifically with the SBA and their data base and your utilization of it. Is there anything there that would be helpful to them or to you if it were done more differently?

Mr. **Ryan**. I would have to refer that also to Dr. Connerton.

Ms. **Connerton**. With each of the regulatory flexibility analyses that are being worked on we always contact SBA and ask what kinds of information they might have available.

For instance, in the case of Davis-Bacon they were able to find some very helpful data in the Census Bureau that actually not only looked at the size of construction firms but also whether they received any Government revenues, and this was exactly the type of data we needed to address the small business impacts of our proposed changes in the Davis-Bacon regulations.

Mr. SMITH. Would the gentleman yield?

Mr. IRELAND. Yes, indeed.

Mr. SMITH. I would point out also that we have given the Commerce Department $1 million in each of the last 2 years which they have not used yet for the purpose of coordinating some of this information, some of which comes from Census and other places and, of course, you know SBA does have a data base project also.

Ms. CONNERTON. Yes, sir, I am familiar with it.

Mr. IRELAND. Good.

Any further questions?

Thank you, Mr. Ryan. We are pleased with what you are doing. Thank you.

From the Environmential Protection Agency, Mr. Joseph A. Cannon.

TESTIMONY OF JOSEPH A. CANNON, ACTING ASSOCIATE ADMINISTRATOR FOR POLICY AND RESOURCE MANAGEMENT, ENVIRONMENTAL PROTECTION AGENCY; ACCOMPANIED BY DANIEL J. FIORINO, REGULATORY FLEXIBILITY OFFICER, AND ROY N. GAMSE, DEPUTY ASSOCIATE ADMINISTRATOR FOR POLICY AND RESOURCE MANAGEMENT, EPA

Mr. CANNON. Mr. Chairman, while I wish to avoid the pitfalls of those who preceded me, I do have a brief summary of our fuller testimony.

Mr. IRELAND. I would be delighted for you to proceed with the brief summary.

Mr. CANNON. I have with me Daniel J. Fiorino, our regulatory flexibility officer, and Roy N. Gamse, Deputy Associate Administrator for Policy and Resource Management.

I am the Acting Associate Administrator for Policy and Source Management.

The Administrator of the Environmental Protection Agency shares your concern regarding the impacts of Agency regulations on small businesses and other small entities.

Since this is one of her major regulatory reform priorities, EPA welcomes the Regulatory Flexibility Act as a means of achieving this goal.

I would like briefly to describe what we have done to implement the act. In early 1981, we established an agency work group to plan for the Regulatory Flexibility Act including the development of a set of internal guidelines. These guidelines are currently under extensive review by the EPA Steering Committee, which is a committee composed of representatives of senior agency officials. EPA's plan for periodic review of existing regulations was published July 16, 1981, and starting this month EPA will list in the Federal Register regulations to be reviewed during the next 12 months in a special section of our regulatory agenda. We will ask for public comment on each regulation listed.

I would like to note at this point that as a matter of fact Mrs. Gorsuch intends to review all of the existing regulations within the next 5 years and not to wait for 10 years to do it.

I would now like to explain EPA's approach to interpret economic impact on a substantial number of small entities. In general a "substantal number" of small entities is about 20 percent, but this 20-percent rule is not fixed as far as we are concerned. There may be cases where the intent of the act indicates a need for regulatory flexibility analysis when fewer than 20 percent of small entities are affected.

For example, some regulations can impose a severe economic hardship on a small number of businesses, and this would require regulatory flexibility analysis even though the total number may be very small.

To determine a significant economic impact the lead office considers annual costs, capital costs, and possible plant closures. One problem that we have encountered interpreting the act is whether it applies to regulations that have a significant beneficial impact. I know you have some concerns about this. We realize that this interpretation is justified not only by the legislative history but further by your comments this morning.

However, we feel that we oftentimes amend existing regulations with the specific intent of reducing regulatory burdens, frequently eliminating a regulation entirely or eliminating certain paperwork requirements. We believe that preparing regulatory flexibility analyses would be costly not just because it is costly to the Agency but it would delay the relief that is requested or sometimes urgently needed by small affected entities.

One of the major goals of the act is to encourage agencies to tier their regulations, that is to exempt or to set less stringent requirements for small entities. EPA has issued more than 40 regulations that have less stringent regulations and requirements for small businesses. For example, we have exempted small generators from regulations under the Resource Conservation and Recovery Act. In addition, our new source performance standards under the Clean Air Act and our effluent guidelines under the Clean Water Act include many examples.

To encourage public participation in our regulatory process, both our solid waste and toxic substances programs have special hotlines to respond to questions and problems of small businesses. Each of these lines handles about 2,000 inquiries a month.

Finally, we are considering appointing a small business office or establishing really a small business hotline in the Office of Policy Analysis to assist the small businesses who are experiencing difficulties meeting or understanding regulatory requirements.

We were taking our lead on this from the Department of Commerce that apparently has developed a successful program on the small business hotline.

In closing, I would like to emphasize that EPA will continue its effort to minimize the regulatory burden on small entities. Moreover, we anticipate that our implementation of the Regulatory Flexibility Act will aid in promulgating cost effective regulations.

Thank you very much.

[Mr. Cannon's prepared statement follows:]

PREPARED STATEMENT OF JOSEPH A. CANNON, ACTING ASSOCIATE ADMINISTRATOR FOR POLICY AND RESOURCE MANAGEMENT, ENVIRONMENTAL PROTECTION AGENCY

Good morning Mr. Chairman and members of the Subcommittee. I am Joseph A. Cannon, Acting Associate Administrator for Policy and Resource Management of the Environmental Protection Agency. I am pleased to appear before you today to discuss the Agency's progress in implementing P.L. 96-354, the Regulatory Flexibility Act.

Background

The Regulatory Flexibility Act requires that Federal agencies analyze the effects of new and existing regulations that have a significant economic impact on "small entities." As defined in the Act, small entities include small businesses, local governments, and small organizations.

The Act mandates that each Federal agency periodically review existing regulations and publish in the Federal Register a plan of review for those regulations with a significant economic impact on small entities. The review determines whether an existing regulation should be left unchanged, amended or rescinded to minimize economic impacts on small entities. The Act requires that each agency annually publish in the Federal Register a list of the rules to be reviewed in the coming year. The list must describe each rule, its need, its legal basis, and invite public comment.

Each regulation with significant impact on small entities must be reviewed at least once every ten years.

New regulations proposed after January 1, 1981 must have a Regulatory Flexibility Analysis (RFA) or certification that the regulation as promulgated will not have a significant economic impact on large numbers of small entities. Agencies must also issue a Regulatory Agenda listing rules being developed which may have such an economic effect.

I would now like to discuss EPA's implementation of the Regulatory Flexibility Act.

Overview of Compliance with the Act

The Environmental Protection Agency is committed to minimizing significant economic impacts on small entities. In early 1981, EPA established an Agency Workgroup to plan for implementation of the Regulatory Flexibility Act, including a set of internal guidelines. These internal guidelines are currently under extensive review by the EPA Steering Committee, composed of representatives of top Agency officials.

EPA's Plan for Periodic Review of Existing Regulations was published July 16, 1981. In December 1980, the Agency appointed its Regulatory Flexibility officer, Mr. Daniel Fiorino of the Office of Standards and Regulations, who is also our official liaison with the Small Business Administration (SBA). He is responsible for implementation of the Regulatory Flexibility Act, including coordinating review of regulations for economic impact, coordination of Steering Committee and Workgroup activities, and ensuring Agency compliance with the Act.

Starting this month, EPA will list in the Federal Register regulations to be reviewed during the next twelve months in a special section of our Regulatory Agenda. We will ask for public comment on each regulation listed. Our last Agenda was published April 27, 1981.

The Mechanics of Regulatory Flexibility

To date, EPA has proposed one regulation which required a Regulatory Flexibility Analysis (RFA). The rule proposed effluent standards and limitations for the porcelain enameling industry. Many other RFAs are in process, including: an exemption for small manufacturers from the reporting requirements of section 8 of the Toxic Substances Control Act; several effluent guidelines under the Clean Water Act; revisions of drinking water regulations; and listings of hazardous waste and permit standards under the Resource Conservation and Recovery Act. Our next Agenda will list each regulation under development that may require an RFA.

In establishing minimum requirements for deciding whether a Regulatory Flexibility Analysis is necessary, EPA programs must first define "small entity." For this purpose, the lead office may either: 1) use the definitions of "small entity" in the Act, or 2) develop its own definitions by consulting with the SBA and allowing public comments.

After defining "small entity," the Agency must determine whether the regulation will have a "significant impact" on a "substantial number of small entities." We make this determination on a case-by-case basis using the criteria discussed below.

In general, a "substantial number" of small entities is more than 20%, but the 20% rule is not fixed. There may be cases where the intent of the Act indicates the need for an RFA when less than 20% of small entities are affected. For example, some regulations could impose such severe economic hardship on a few business that the RFA would be necessary, even though the total number affected might be small.

To determine a "significant economic impact" the lead office considers annual costs, capital costs, and potential plant closures.

The third aspect of EPA's compliance with the Act is reporting information on small entities in the Regulatory Agenda. Our Agenda deals with this in two ways:

1. In the section of our Regulatory Agenda where EPA gives small entities general notice of regulations that may affect them, we add one of the following three determinations:
   - o Likely -- (to have a significant impact)
   - o Unlikely -- (to have a significant impact)
   - o Not yet determined
2. If EPA is certain that an RFA will be prepared, we add "RFA" to the section of our Regulatory Agenda which outlines the kinds of analyses a regulation requires.

After reviewing the economic and substantial number criteria, the lead office may conclude that an RFA is unnecessary. In that case the Administrator will certify at the time of publication of the proposed or final rule that the rule will not have such an adverse impact. Such a certification must contain a succinct statement of the reasoning and criteria used to make the determination.

One problem EPA has encountered with the Act is interpreting whether it applies to regulations that have a significant beneficial impact. Such an application could be justified by the legislative history of the Act, but this interpretation may interfere with the goal of the Act, which is to reduce unreasonable burdens. EPA amends many existing regulations to reduce regulatory burdens, such as reporting requirements. Preparing an RFA for these regulations would be costly, as well as delay the regulations that small entities may want.

EPA believes that the best way to deal with this issue is on a case-by-case basis. To require RFAs for all regulations that have a significant beneficial impact will delay many regulations, including those for which an RFA would not be fruitful.

The Regulatory Flexibility Analysis (RFA)

The RFA summarizes the economic impact of a regulation on small entities and discusses alternatives that might minimize the impact and still accomplish the statutory objectives. The most sophisticated RFA would contain the following elements:

1. Explanation of Why EPA is Considering Action
2. Objectives and Legal Basis of the Rule
3. Identification of Alternatives
4. Demographic Analysis
5. Cost Analysis
6. Competitive Effects Analysis

7. Exemptions or Allowances
8. Identification of Overlapping Regulations
9. Summary of Public Comments

In order to comply with the Act's requirement to coordinate its implementation with SBA, the Office of Standards and Regulations transmits copies of certifications and RFAs to SBA.

One of the major goals of the Act is to encourage agencies to "tier" their regulations, that is, to exempt or to set less stringent requirements for small entities. EPA has issued more than 40 regulations that have less stringent requirements for small businesses. For example, we have exempted "small generators" from regulations under the Resource Conservation and Recovery Act. In addition, our New Source Performance Standards Program under the Clean Air Act and our Effluent Guidelines under the Clean Water Act include many examples of tiering.

EPA also tries to make exemptions consistent across various programs affecting the same industry, when it is appropriate to do so. Industrial Assistance Staff in our Office of Policy Analysis monitors the process to identify inconsistent exemptions. As a further aid, the Regulation Management Staff in the Office of Standards and Regulations will maintain a catalogue of exemptions based on certifications, previously prepared RFAs, and exemption information included in the Agenda.

Since public participation has always played a key role in the EPA rulemaking process, small business and other small entities may comment on any rules that significantly affect them. Lead offices satisfy this requirement of the Act by taking special measures to involve small entities in regulations that affect them.

Both our Solid Waste and Toxic Substances Programs have special hotlines to respond to questions and problems of small businesses. Finally, we are considering appointing a Small Business Ombudsman in the Office of Policy Analysis to assist small businesses experiencing regulatory difficulties.

Plan for Periodic Review of Existing Regulations

The Act requires that EPA screen its existing regulations to identify those that may have a significant economic impact on a substantial number of small entities. On July 16, 1981, EPA published in the Federal Register our Plan For Periodic Review of Existing Regulations. In deciding whether a regulation imposes significant impacts we look at such factors as high annualized costs for pollution control, the extent of reporting or record-keeping burden, the relationship of pollution control costs to sales, and the anti-competitive effects of a regulation on small businesses. We are in the process of reviewing public comments received in response to the Notice.

In the October 1981 Agenda EPA will announce seven regulations for review under the Act. They are:

- New Source Performance Standards for Grain Mills under Section 111 of the Clean Air Act;
- General Pretreatment Regulations under the Clean Water Act;
- Lead Phasedown Review under section 211 of the Clean Air Act;
- EPA's Public Participation Policy

- General Requirements for Storage Facilities under section 3004 of the Resource Conservation and Recovery Act (RCRA)
- Incinerator Standards under RCRA 3004
- Financial Responsibility regulations under RCRA 3004

In addition, revisions of existing EPA regulations that have significant impacts on small entities are already underway in the drinking water and other programs. We are also reviewing paperwork burdens in the RCRA Program.

The mechanics of EPA's periodic review are as follows:

o Starting in October 1981, EPA will list regulations to be reviewed during the succeeding 12 months under the Regulatory Flexibility Act in a special section in its Regulatory Agenda and will ask for public comment on the need to revise each regulation listed.

o After considering public comments and other available data, the Agency will announce the result of its review either in the subsequent April Agenda or, if more review time is necessary, in the next October Agenda. The decision in each case will announce either no change in the regulation, a revision, or a rescission. EPA will explain the basis of its decision.

o EPA will decide to revise a regulation if (1) the existing burdens on small entities are unreasonable, or (2) there are alternatives that should be considered because they may minimize impacts on small entities.

We may amend our plan for review of regulations under the Regulatory Flexibility Act after we develop procedures for reviewing additional regulations under other regulatory reform statutes and Executive Order 12291.

Conclusion

In closing, I would like to emphasize that EPA will continue its efforts to minimize the regulatory burden on small entities. The Small Business Ombudsman, when appointed, will further assist small businesses with their specific problems and will provide another mechanism for response to their interests and needs. Moreover, we anticipate that our implementation of the Regulatory Flexibility Act will aid in promulgating cost-effective regulations.

As requested, Mr. Chairman, I am providing materials for the record which include my prepared statement, a copy of our ten-year periodic review plan, an example of an initial RFA, and a copy of our April Agenda. We will forward a copy of our October Agenda to the Committee as soon as it is published.

This concludes my prepared remarks. I would be happy to respond to any questions you may have.

Mr. IRELAND. Thank you, Mr. Cannon.

We cannot help but be pleased with the direction you are going in.

In May—and this is something that I am just interested in as to where we stand and what is being done and your reaction to it—in May there was a GAO report that I am sure you are aware of. In that report the GAO said:

> EPA's burgeoning requirements for information have greatly increased the paperwork burden on the public. GAO found that EPA program managers routinely collected information without OMB approval. In other cases EPA did not use or need all of the information on tens of thousands of forms provided by the public as required. Moreover, EPA's official estimates of the actual burden of its approved requirements were based primarily on the Agency's judgment.

You have commented on that to some degree. Could you elaborate a little bit more?

Mr. CANNON. Yes; I might say that the Administrator was sworn into office May 19. One of her very high priorities has been reduction of the paperwork burden. We are now working very closely with OMB. We have submitted an information collection budget. We are in the process of working with them on that. I could give you more specific details if you want. All I can tell you is that this is an extremely high priority. In fact I think we responded to a letter that you wrote to the Administrator expressing our concerns and telling you that we have set up working groups to deal specifically and directly with the problem of paperwork reduction.

Mr. IRELAND. That is good.

The timing of all that and what you were doing I was anxious to have on the record so that GAO was not hanging out there. You have had a chance to show what you have been doing.

Mr. CANNON. I was just told last week that we spent $200 million in information collection activities at the Agency. We think even if we were not interested in relieving the paperwork burden on the regulated community we would be quite interested in reducing the amount of money we spend on information collection activities.

Mr. IRELAND. The internal guidelines that you are developing that include doing a review in 5 years instead of 10 years and all the other guidelines, when that is finally prepared we would be interested in a copy of it, if we may.

Mr. CANNON. We will be happy to send you a copy.

[The material referred to above follows:]

[From the Federal Register / Vol. 46, No. 136 / Thursday, July 16, 1981 / Notices—pp. 36930-31]

ENVIRONMENTAL PROTECTION AGENCY [AS-FRL 1855-8]

PLAN FOR PERIODIC REVIEW OF REGULATIONS

Agency: Environmental Protection Agency.

Action: Plan for periodic review of regulations.

Summary: The Regulatory Flexibility Act requires that EPA periodically review existing regulations that have a significant economic impact on a substantial number of small entities, such as small businesses, small organizations, and small governmental jurisdictions. This plan describes how EPA will perform this review.

Date: Comments solicited in this plan are due by September 14, 1981.

Address: Comments should be submitted to the following address: U.S. Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460, Attn: David Sahr (PM-223).

For further information contact: For information on EPA's implementation of the Regulatory Flexibility Act, please contact David Sahr at (202) 287-0776.

SUPPLEMENTARY INFORMATION—BACKGROUND

On September 19, 1980, the Regulatory Flexibility Act, Pub. L. No. 96-354, codified at 5 USC 601 et seq., became law. This law requires that Federal agencies take into account how their regulations affect "small entities," including small businesses, small Governmental jurisdictions and small organizations. For regulations proposed after January 1, 1981, the Agency must either prepare a Regulatory Flexibility Analysis or certify that the regulation, if promulgated, will not have a significant economic impact on a substantial number of small entities. Section 602 requires that EPA issue an *Agenda of Regulations* identifying rules the Agency is developing that are likely to have a significant economic impact on a substantial number of small entities. EPA published its most recent Agenda on April 27, 1981 at 48 FR 23692.

Section 610 of the Regulatory Flexibility Act mandates that Federal agencies review existing regulations. It requires that EPA publish a plan in the Federal Register explaining how it will review those of its existing regulations which have or will have a significant economic impact on a substantial number of small entities. Regulations in effect on January 1, 1981 must be review within ten years of that date. Regulations that become effective after January 1, 1981 must be reviewed within ten years of the publication date of the final rule. Section 610(c) requires that EPA publish annually in the Federal Register a list of rules it will review during the succeeding 12 months. The list must describe the rule, explain the need for it, give the legal basis for it, and invite public comment.

Criteria for Review of Existing Regulations

The purpose of the review is to determine whether existing rules should be left unchanged, or whether they should be revised or rescinded in order to minimize significant economic impacts on a substantial number of small entities. In deciding whether change is necessary, the Regulatory Flexibility Act establishes several factors that EPA will consider: (1) whether the rule is still needed; (2) what type of complaints or comments where received concerning the rule from the public; (3) the complexity of the rule; (4) how much the rule overlaps, duplicates or conflicts with other Federal rules, and, to the extent feasible, with State and local governmental rules; and (5) how long it has been since the rule has been evaluated or how much the technology, economic conditions, or other factors have changed in the area affected by the rule.

Plan for Periodic Review of Rules

EPA will screen its existing regulations to identify the regulations that may have a significant economic impact on a substantial number of small entities. In deciding whether a regulation imposes significant impacts, EPA will look at such factors as high annualized investment costs for pollution control, the extent of reporting or recordkeeping burden, the relationship of pollution control costs to sales, and the anticompetitive effects of a regulation on small businesses.

After identifying the regulations that may have significant impacts on a substantial number of small entities, EPA will review these regulations based on available information (e.g. from EPA data, public comments). The result of review will be a decision (1) to revise the regulation, (2) to rescind the regulation or (3) to leave the regulation unchanged.

To help us select the regulations which should be reviewed first, we welcome any suggestions from the public. If any member of the public thinks that specific existing regulations have a significant impact on a substantial number of small entities (especially if the regulation has a disproportionately negative effect on small relative to large entities), we would appreciate receiving suggestions that we review those regulations. We suggest that comments be given in the following format: (1) Title; (2) Authorizing statute and Code of Federal Regulations (CFR) citation; (3) Description of economic effects on small entities, especially on the commenting person or organization; and (4) Recommendations for changes.

We would also welcome any additional detailed comments or data.

When EPA promulgates new regulations for which it prepares a Regulatory Flexibility Analysis because of significant economic impact on a substantial number of small entities, it will indicate in the preamble to the final regulation when it will review the regulation.

The mechanics of EPA's periodic review are as follows:

Starting in October 1981, EPA will list regulations to be reviewed during the succeeding 12 months under the Regulatory Flexibility Act in a special section in its *Agenda of Regulations* and will ask for public comment on the need to revise each regulation listed.

After considering public comments and other available data, the Agency will announce the result of its review in the subsequent April agenda or no later than the next October Agenda. The result will consist either of a decision not to change the regulation, to revise the regulation or to rescind the regulation. EPA will explain the basis of its decision.

Regulations to be revised will enter the normal process of regulation development.

Executive Order 12291 and the Vice President's Task Force on Regulatory Relief

Sections 2 and 3(i) of Executive Order 12291 require that agencies initiate reviews of existing regulations to determine whether the benefits of the regulation to society outweigh the costs. EPA has already initiated reviews in three regulatory programs. In reviewing the regulations listed below, the Agency will consider alternatives that will minimize any significant impacts on small entities.

Best Conventional Pollutant Control Technology. CWA 301, 304. 40 CFR Parts 405-409, 411, 412, 418, 422, 424, 426, 427, 432. There rules set limits for discarge of conventional pollutants into navigable waters.

Hazardous Waste Management. RCRA 3001, 3002, 3003, 3004. 40 CFR Parts 122-124, 260-262, 264-267. These rules regulate the generation, handling, treatment, storage and disposal of hazardous wastes.

General Pretreatment Regulations. CWA 301, 304, 307. 40 CFR Part 403. These rules control the discharge from industrial sources into publicly owned treatment works (POTW's) and include requirements for State and local programs. This review may also entail some consideration of the related *Electroplating Pretreatment Regu-*

lations. CWA 307. 40 CFR Part 413. These rules limit the discharge of toxic metals from electroplating operations into publicly owned treatment works.

The Agency may decide to amend this plan for a review of regulations under the Regulatory Flexibility Act after we develop procedures for reviewing additional regulations under the Executive Order.

The Vice President's Task Force on Regulatory Relief has suggested that regulated industries and organizations write directly to Federal agencies to identify regulations that need review or revision. EPA is presently summarizing the many comments it has received. Several comments have addressed the particular problems of small entities. The Agency will use these comments in setting priorities for its review of regulations under the Regulatory Flexibility Act.

Dated: July 9, 1981.

ANNE M. GORSUCH,
Administrator.

Mr. IRELAND. How about the questions that you have heard about the data base area? We are anxious to be as helpful not only to the agencies but to the SBA as well as far as whether that is doing the trick and what can be done to improve it.

Mr. CANNON. I do not think we have a problem with the data base. We have, I might say, for some time, although I am new to the Agency myself, but for some time we have taken into account the needs of business generally. There has been some occasional warring within the Agency on this, but I think maybe Roy could answer these questions specifically.

Mr. GAMSE. Yes, sir. I have managed the economic analysis work in the Agency for a number of years before taking over my new job as Joe's deputy. It is kind of a problem that you have to look at on a case-by-case basis. When we are looking at the development of a regulation that might impact small businesses we have to ask ourselves the question of whether we need to go out to the industry affected in order to gather information. In many cases the industries and the small businesses in the industries want to provide the information to give us the basis for relief. So, for example, when we regulated the electroplating industry or the metal finishers, which have vast numbers of small businesses included in their numbers, we have had the trade associations come forward and offer to do surveys or to provide information.

In many cases, by using the trade associations, we can get them to do that in a way that would be a lot less burdensome than if the Government were sending out a lot of forms to a lot of members. They can give us information they have collected for other purposes, and we do not have to impose a burden on the small businesses in the industry in order to determine whether to give them a break in the regulation.

Mr. IRELAND. That is good.

Mr. Topping, do you have any questions?

Mr. TOPPING. Thank you, Mr. Chairman.

You do not visualize having to send questionnaires to the industry as such, to compile the information? There was some concern in the development of the act that small business does not like to be burdened, to obtain an evaluation of the impact of regulations by the agencies.

Mr. CANNON. We do not have a formal system of questionnaires that we routinely send out to businesses. We try to talk to the people and occasionally we will send letters, but we do not have a routinized form that we send out on a regulation-by-regulation basis.

Mr. **Gamse**. Let me add a bit. We have in the past gone out with some sampling or survey requests just as part of fulfilling the statutory requirements of our governing environmental statutes. We will have to continue doing that in cases where we cannot lay our hands on the information any other way, but the Reg. Flex. Act will not add any burden that we might impose in gathering information.

Mr. **Ireland**. Let me ask you, Mr. Cannon, the cornerstone of relating to the small business world for this act is through the Office of Advocacy of the Small Business Administration. The Office of Advocacy is something that not only this committee but the Congress and the people think, "This is where the action is." How has your relationship been? Is this working out from your side of the fence in your dealing with advocacy?

Mr. **Cannon**. I would have to answer personally I have not dealt with them, although I have read their comments on our program, but Dr. Fiorino, who is our regulatory flexibility officer, does deal with them.

Mr. **Fiorino**. We, like every other agency, have a desk officer from SBA. We found people generally at SBA generally responsive and flexible in trying to interpret the act in a way that promotes its spirit as well as its letter. They were very helpful in consulting on our approach to define substantial numbers and significant impact and very helpful in discussions of how to deal with benefits under the act. So, in general, we have been very pleased.

Mr. **Ireland**. I would say, too, that we have heard from the SBA that the kind of analysis that you do is a type leadership among the agencies. I would want to take note of that. Of course, we know that with the bubble concept, or whatever it is called, that you have been flexible before there was flexibility, and it is a good thing.

I want to thank you for your testimony, thank you for what you are doing, and I think that will do it for today. Thank you very much.

[Whereupon, at 11:30 a.m., the subcommittee adjourned, to reconvene subject to call of the Chair.]

OVERSIGHT OF REGULATORY FLEXIBILITY ACT
(Part 1)

WEDNESDAY, OCTOBER 21, 1981

House of Representatives,
Subcommittee on Export Opportunities and
Special Small Business Problems,
Committee on Small Business,
Washington, D.C.

The subcommittee met, pursuant to notice, at 9:30 a.m., in room 2359-A, Rayburn House Office Building, Hon. Andy Ireland (chairman of the subcommittee) presiding.

Mr. **Ireland**. Good morning, everybody. We are here to begin another day of hearings on oversight of the Regulatory Flexibility Act, and we are delighted to welcome our first witness this morning, Mr. Reese Taylor, Chairman of the Interstate Commerce Commission.

Mr. Taylor.

TESTIMONY OF REESE H. TAYLOR, JR., CHAIRMAN, INTERSTATE COMMERCE COMMISSION

Mr. **Taylor**. Mr. Chairman and members of the subcommittee, thank you for the opportunity to appear here today to present the views of the Interstate Commerce Commission with respect to the Regulatory Flexibility Act and our implementation of this legislation.

At the outset, I would like to say that this Commission has in the past, and will in the future, continue to share the concern of your subcommittee for the difficulties that small entities face in competing with larger businesses because of the disproportionate economic burden placed on such firms in complying with Government regulations.

The purpose of the act—that is, to establish as a regulatory principle that agencies shall endeavor to fit regulatory and informational requirements to the scale of businesses, organizations, and governmental jurisdictions subject to regulation—is a praiseworthy goal that is not always easily obtained.

I believe that the Commission, while having experienced some initial problems in achieving full compliance with the technical requirements of the act, has at least demonstrated at all times a concern for the plight of small entities.

I believe the testimony of the Chief Counsel for Advocacy of the Small Business Administration before your subcommittee is correct in its assessment of the Commission's initial difficulties in fully complying with the regulatory flexibility analysis sections of the act.

However, I do not agree with the statement that small business initiatives began to suffer subsequent to passage of the act. The actions taken by the Commission in this area are set forth on a list of ICC small business initiatives since July 1, 1980, which I believe demonstrates that the Commission is: (1) Concerned with the plight of small entities, and (2) endeavoring to assist them whenever possible.

At this time, Mr. Chairman, I ask that the list be made a part of the record of this hearing as it is not attached to our presentation. In addition to the list, I might also suggest that our April agenda, our October agenda, the periodic review, a final regulatory flexibility analysis and an initial regulatory flexibility analysis are also part of the package we would like to submit for the record.

And we would, if we could, like to make that all a part of the record.

Mr. IRELAND. I'd be glad to do so.

[The material referred to above follows:]

SMALL BUSINESS INITIATIVES SINCE JULY 1, 1980

July 3, 1980 -- Issued final rules exempting motor carrier movements of property and passengers when incidental to transportation by air (No. MC-C-3437 (Sub-No. 12)).

July 1980 -- Initiated, in conjunction with U.S. Department of Agriculture, study of feasibility of requiring written contracts for interstate shipments of exempt commodities.

August 1980 -- In cooperation with DOT and state motor carrier regulatory bodies, undertook study to develop more efficient and equitable state regulations system.

August 29, 1980 -- Issued policy statement setting out provisions for determining impact of decisions on small businesses (Ex Parte No. 373).

September 3, 1980 -- Served notice of elimination of requirement that contract carriers file copy of each bilateral contract with Commission (Ex Parte No. MC-9 (Sub-No. 1)).

October 17, 1980 -- Served final rules to improve and simplify tariff filing procedures and requirements (Ex Parte No. 370).

October 1980 -- Published informational bulletin on government traffic.

November 3, 1980 -- Issued notice of intention to revise leasing regulations to require disclosure of loading and unloading responsibility (Ex Parte No. MC-43 (Sub-No. 11)).

November 19, 1980 -- Issued final rules streamlining environmental impact reporting requirements (Ex Parte No. 55 (Sub-No. 22)).

December 24, 1980 -- Served final rules eliminating gateway restrictions and circuitous route limitations (Ex Parte No. 142).

December 24, 1980 -- Instituted final rules establishing expeditious procedures for elimination of undesirable operating restrictions and broadening of unduly narrow authorizations in existing certificates and permits (Ex Parte No. MC-142 (Sub-No. 1)).

December 24, 1980 -- Issued final rules governing applications for operating authority (Ex Parte No. 55 (Sub-No. 43)) and policy statement on acceptable forms of requests for operating authority (Ex Parte No. 55 (Sub-No. 43A)).

January 1981 -- Published informational bulletins on (1) passenger bus operations, and (2) state regulatory commissions and fuel tax divisions.

January 5-16, 1981 -- Conducted series of public hearings to explore the feasibility of written contracts for interstate movements of exempt commodities (in conjunction with the U.S. Department of Agriculture).

January 8, 1981 -- Issued policy statement on minority participation in the motor carrier industry and announced establishment of system to identify and measure minority firms involved in surface transportation (Ex Parte No. MC-150).

February 1981 -- Issued public advisory, guide to applying for permanent operating authority, and informational bulletin on restrictions removal procedures.

February 5-April 6, 1981 --Held seven public hearings throughout the country on increasing minority participation in the transportation industry.

February 27, 1981 -- Served notice of proposed rulemaking to allow private carrier to trip lease to authorized carriers (Ex Parte No. MC-43 (Sub-No. 12)).

March 1981 -- Published informational bulletins (1) highlights of the Motor Carrier Act, (2) guide to filing protests, replies and appeals, (3) sample caption summaries, and (4) Department of Transportation and State regulations.

March 31, 1981 -- Served final rules to allow owner-operators to obtain authority to transport foodstuffs (and other specified goods) through a simplified fitness-only procedure at a reduced cost ($150) and wth simplified rate filing requirements (Ex Parte No. MC-143).

April 1981 -- Published informational bulletins on (1) owner-operator food transportation and (2) filing of tariffs or schedules.

April 8, 1981 -- Issued streamlined appellate procedures rules (Ex Parte No. 55 (Sub-No. 45)).

June 6, 1981 -- Issued notice of institution of study on loading and unloading practices in the motor carrier industry to eliminate owner-operator abuses (Ex Parte No. 410).

June 22, 1981 -- Served notice of proposal to simplify regulations for motor common carriers of property to interchange equipment at international boundary lines with motor carriers licensed by the appropriate authorities of Canada and Mexico (Ex Parte No. 73 (Sub-No. 1)).

July 8-August 22, 1981 -- Conducted 15 2-day training conferences for owner-operators across the nation (in conjunction with SBA and DOT).

July 8, 1981 -- Issued notice of proposal to allow for electronic transmission of freight bills and loss and damage claims (Ex Parte No. 263 (Sub-No. 3)).

July 14, 1981 -- Issued stay of final rules on bodily injury and property damage liability insurance minimums and adopted temporary rules to reconcile differences in statutory requirements of the Motor Carrier Act of 1980 (Ex Parte No. MC-5 (Sub-No. 1)).

August 7, 1981 -- Served report on minority participation in the surface transportation industry (Ex Parte No. MC-150 (Sub-No. 1)).

August 13, 1980 -- Directed all ICC bureaus and offices to develop list of unnecessary regulations in an attempt to relieve regulatory burdens on small businesses.

August 17, 1981 -- Issued notice of proposal to establish procedures for the handling of applications for the recovery of expenses by parties to Commission adjudicatory proceedings to implement the Equal Access to Justice Act (Ex Parte No. MC-55 (Sub-No. 52)).

September 9, 1981 -- Served notice of proposal to clarify and close loopholes in existing leasing rules to better protect owner-operator rights (Ex Parte No. MC-43 (Sub-No. 13).

September 17, 1981 -- Issued notice of proposal to reduce accounting and reporting burdens on railroads and trucking companies. Railroads would be relieved from filing 21 schedules and Class I and II motor carriers 15 schedules (Nos. 38568 and 38590).

September 28, 1981 -- Denied a number of rate applications which would harm small shippers by allowing special discounts ranging from 5 to 24 percent to be made available to only large, specifically named shippers.

September 29, 1981 -- Served final rules raising allowable agricultural cooperations regulated commodities movements for non-farm members from 15 to 25 percent of total annual volume (Ex Parte No. MC-75 (Sub-No. 3)).

October 1, 1981 -- Held oral argument on common carrier obligation to examine extent to which common carriers must hold out service (Ex Parte No. MC-77 (Sub-No. 3)).

October 8, 1981 -- Signed a Memorandum of Understanding between ICC and the Department of Commerce to work together on fostering minority business enterprise programs.

October 8, 1981 -- Issued final rules on modification of fuel surcharge program to establish a more equitable program of fuel costs reimbursement for owner-operators and small shippers (Ex Parte No. 311 (Sub-No. 4)).

October 14, 1981 -- Held oral argument to reexamine policy prohibiting owner-operators from leasing their equipment, with drivers, directly to private carriers (Ex Parte No. MC-122 (Sub-No. 2)).

discrimination on the basis of race, color, or national origin in all NSF-assisted programs. The Foundation is considering technical changes recently suggested by the Department of Justice. If such changes are adopted, they will be proposed in the **Federal Register** for public comment. However, no decision has yet been made with respect to the changes and consequently any publication date.

Legal basis for issuance: Section 11 of the NSF Act and Title VI of the Civil Rights Act of 1964.

Name of Agency official: Frank Hersman, Esq., Office of the General Counsel, (202) 357-7465.

Regulatory analysis: None required.

B. Existing Regulations Under Review

None.

C. New Regulations Under Development

1. Regulations Designating Pollutants Harmful to the Antarctic Environment

The Foundation intends to designate as a pollutant any substance the Director finds likely, if introduced into Antarctica, to hazard human health, to harm living things, to damage amenities, or to interfere with legitimate uses of Antarctica.

Legal basis for issuance: Section 11 of the NSF Act; Antarctic Conservation Act of 1978 (Pub. L. 95-541).

Name of Agency official: Edward P. Todd, Division of Polar Programs, (202) 357-7766.

Regulatory analysis: None required.

2. Regulations to Prevent or Control Pollutants in Antarctica

The Foundation also intends to specify actions to prevent or control the discharge of pollutants in Antarctica.

The schedule for publication of these regulations has not been established.

Legal basis for issuance: Section 11 of the NSF Act; Antarctic Conservation Act of 1978 (Pub. L. 95-541).

Name of Agency official: Edward P. Todd, Division of Polar Programs, (202) 357-7766.

Regulatory analysis: None required.

D. Existing Regulations Scheduled for Review Within the Next Six Months

1. Grant Policy Manual

See item A.1.

2. Conflict of Interest Regulations

See item A.2.

Dated: April 27, 1981.

Donald N. Langenberg,
Acting Director.

[FR Doc. 81-13116 Filed 4-29-81; 8:45 am]

BILLING CODE 7555-01-M

INTERSTATE COMMERCE COMMISSION

49 CFR Chapter X

Semi-Annual Agenda of Regulations

AGENCY: Interstate Commerce Commission.

ACTION: Semi-annual Agenda of Regulations.

SUMMARY: In keeping with its responsibilities under section 602 of the Regulatory Flexibility Act, Pub. L. 96-354, and Executive Order 12291, 46 FR 13193, February 19, 1981, the Commission is publishing an agenda of rulemaking proceedings either currently underway or expected to be opened in the near future.

ADDRESSES: Public comments in any Commission proceeding are available, after the close of the comment period, at the Interstate Commerce Commission, 12th and Constitution Avenue, N.W., Washington, D.C. 20423, during normal business hours. Documents may be copied for a nominal charge.

FOR FURTHER INFORMATION CONTACT: For further information about any item listed in the agenda, contact the individual listed in the column headed "Contact" for that item.

SUPPLEMENTARY INFORMATION: The following list of rulemaking proceedings is composed primarily of rulemakings of general public interest in which the public comment period is either now running or soon to begin. However, four of the proceedings, numbers 1, 5, 6, and 9, have not, as of this date, been approved by the Commission. The Commission may vote to approve the proceedings as proposed, to modify them, or to reject them.

Two of the proceedings, numbers 8 and 9, may involve Regulatory Impact Analyses as required by the Regulatory Flexibility Act. Proceeding number 8 has already been opened by the issuance of an advanced notice of proposed rules. After the comments on the advance notice are reviewed, the Commission will decide what, if any, rulemaking action to propose, and decision will be made at that time as to whether a Regulatory Impact Analysis will be required. In proceeding number 9 a draft notice of proposed rules, containing a Regulatory Impact Analysis, is presently before the Commission for a vote. If the Commission approves the draft decision, it will be published in the next few weeks.

The great majority of Commission rulemaking proceedings are designed to eliminate unnecessary regulations and to reduce the complaince burden for those regulations which are necessary. As a result, most rulemaking proceedings opened since the passage of the Regulatory Flexibility Act have contained a certification, in accordance with section 605(b) of the Act, that the rules will not have a significant economic impact on a substantial number of small entities. The certifications usually request public comment on the issue of impact on small entities, and the public is eccouraged to file comments on the issue as it relates to any of the proceedings listed in this agenda.

Agatha L. Mergenovich,
Secretary.

Interstate Commerce Commission Semi-Annual Agenda of Regulations

Title and docket No.	Description, nature, and objective of rule	Legal base 49 U.S.C.	Approximate schedule	Contact
1. Revision of Abandonment Regulations, Ex Parte No. 274 (Sub-No. 5).	Proceeding to revise regulations (49 CFR 1121) to reflect various policy changes made since present regulations were adopted. Policy changes are a result of Commission decisions, court decisions, and new legislation. In particular, changes will be made affecting cost evidence in railroad abandonment proceedings.	10362 and 10903-06	NPRM is scheduled to be published in May, provided it is approved by the Commission. Comments will be due within 60 days of publication; final rule should be published within 90 days of close of comment period.	Ellen D. Hanson, Deputy Director, Section of Finance, Office of Proceedings, Interstate Commerce Commission, Washington, D.C. 20423, (202) 275-7245.
2. Detention of Motor Vehicles—Nationwide, Ex Parte No. MC-88.	Proceeding in response to petitions seeking change in present detention rules for regulated motor carrier industry (49 CFR 1307.35(e) and 1310.15(f)). The Commission is considering returning the issue of detention to the jurisdiction of motor carrier management.	10101, 10741, and [illegible].	Comments on NPRM due May 4, 1981. Final rule possible by Fall 1981.	Richard Felder or Jane Mackall, Section of Rates, Office of Proceedings, Interstate Commerce Commission, Washington, D.C. 20423, (202) 275-[illegible].

Interstate Commerce Commission Semi-Annual Agenda of Regulations—Continued

Title and docket No.	Description, nature, and objective of rule	Legal basis 49 U.S.C.	Approximate schedule	Contact
3. Coal Rate Guidelines—Nationwide Ex Parte No. 347 (Sub-No. 1).	Proceeding to set guidelines for determining reasonable rates for rail transportation of coal.	10701a and 10704	Comment period on NPRM extended to May 11, 1981. No date set for issuance of final rule.	Richard Felder or Jane Mackall, Section of Rates, Office of Proceedings, Interstate Commerce Commission, Washington, D.C. 20423, (202) 275-7693.
4. Leasing Rules Modifications, Ex Parte No. MC-43 (Sub-No. 12).	Proceeding to revise regulations (49 CFR Part 1057) which govern leasing of equipment by motor carriers holding ICC authority. Purpose is to eliminate distinctions in treatment of private and for-hire motor carriers.	10102(14) and 10524(a).	Comment period on NPRM closed Apr. 20, 1981. Final rules possible within 90 to 120 days.	Edward Guthrie, Deputy Director, Section of Operating Rights, Interstate Commerce Commission, Washington D.C. 20423, (202) 275-7597.
5. Interchange Policies at International Boundaries, Ex Parte No. MC-73 (Sub-No. 1).	Proceeding to adopt rules to facilitate movement of traffic over international boundaries. NPRM was published previously; however, Motor Carrier Act of 1980 precludes adoption of original proposal. New proposal being formulated; if approved by the Commission, it will be published as 2nd NPRM.	10101 and 10107	2nd NPRM should be published by end of May; comments will be due within 60 days of publication.	Edward Guthrie, Deputy Director, Section of Operating Rights, Interstate Commerce Commission, Washington, D.C. 20421, (202) 275-7691.
6. Elimination of Accounting and Reporting Requirements for Class II Railroads, No. 37614.	Proceeding to eliminate accounting and reporting requirements for Class II railroads. The Commission no-longer uses the data contained in Class II railroad reports.	11141 through 11146	NPRM should be published in next few days. Comments will be due 45 days after publication of NPRM. Final rule possible by end of June.	Bryan Brown, Jr., Chief, Section of Accounting and Reporting, Bureau of Accounts, Interstate Commerce Commission, Washington, D.C. 20423, (202) 275-7448.
7. Revisions to Preliminary Report of Number of Employees of Class I Railroads and Monthly Report of Employees Service and Compensation, Forms A & B No. 37025.	Proposal to combine two reports into one and to greatly reduce the amount of information that has to be filed each month.	11141 through 11146	Comments on NPRM due May 15, 1981. No date set for issuance of final rules.	Bryan Brown, Jr., Chief, Section of Accounting and Reporting, Interstate Commerce Commission, Washington, D.C. 20423, (202) 275-7448.
8. Regulations Governing Minimum Amounts of Cargo Insurance, Bonds, and Other Security Required to be Held by Motor Carriers of Property and Freight Forwarders, Ex Parte No. MC-5 and Ex Parte No. 159.	Proceeding to review present rules (49 CFR 1043) to determine whether they are needed and whether current minimum requirements offer sufficient protection to the public. Proceeding will also review present list of low-value commodities exempt from requirements.	10927	Comments due on ANPRM May 1, 1981. NPRM should be published by August, 1981.	Patricia M. Schultz, Transportation Industry Analyst, Office of Consumer Protection, Interstate Commerce Commission, Washington, D.C. 20423, (202) 275-7475.
9. Agricultural Cooperative Exemption, Ex Parte No. MC-75 (Sub-No. 3).	Proceeding to implement the enhanced enforcement powers given the Commission by section 24 of the Motor Carrier Act of 1980. Would modify 49 CFR 1047 to require agricultural cooperatives to maintain additional information concerning their transportation activities. Staff proposed NPRM has not at this date, been approved by the Commission.	10526(a)(5) and 10528.	If NPRM is approved by the Commission, it will be published in the FEDERAL REGISTER in the next few weeks.	Phyllis Gunn, Transportation Industry Analyst, Office of Consumer Protection, Interstate Commerce Commission, Washington D.C. 20423, (202) 275-7475.

[FR Doc. 81-12898 Filed 4-29-81; 8:45 am]

BILLING CODE 7035-01-M

INTERSTATE COMMERCE COMMISSION

REGULATORY FLEXIBILITY ACT: PERIODIC REVIEW OF REGULATIONS

AGENCY: Interstate Commerce Commission

ACTION: Publication of a Plan for the Periodic Review of Commission Rules.

SUMMARY: Under the Regulatory Flexibility Act (Pub. L. 96-354) each federal agency must publish a 10-year plan for the review of its rules that have or will have a significant impact on a substantial number of small entities. The Interstate Commerce Commission's plan, set forth below, calls for the commencement of the review process in 1982.

FOR FURTHER INFORMATION CONTACT:

Eliot Horowitz
(202) 275-7961

SUPPLEMENTARY INFORMATION:

The Regulatory Flexibility Act (RFA) [5 U.S.C. §601 et. seq] is designed to ensure that an agency considers the effect of its rules upon small entities. Section 610 of the act require each agency to review periodically its rules for this purpose. Specifically, a schedule must be established for the review, within 10 years of January 1, 1981 of existing rules having a significant economic impact on small entities. [Section 610 permits, within limitations, an agency to revise its schedule and to extend the time for compliance provided that adequate notice is given the public.

The Commission's regulations are set forth in a number of Parts under Chapter 10 of Title 49 of the Code of Federal Regulations, and are designed to implement the provisions of the Interstate Commerce Act, as amended. They affect a variety of regulatory areas, including substantive and procedural matters, recordkeeping and compliance.

The Commission is currently involved in an extensive review of all of its regulations for the general purpose of ensuring that each serves an express public purpose, and achieves that purpose in the most efficient manner possible. This internal study will facilitate our compliance with Section 610. In accordance with Section 610, the Commission shall, beginning with the current fiscal year, publish on or before January 1st, a list of the specific regulations which will be reviewed for RFA purposes over the succeeding 12 month period. The list shall include a brief description of each rule and the need for and legal basis of such rule and shall invite public comment on the rule. 5 U.S.C. 610(c).

Therefore, the ICC proposes to commence its annual reviews by January 1 of each year in accordance with the following schedule:

Subject	ICC rule	Review Period
Records containing information about individuals	Part 1007, Subchapter A	1982

Subject	ICC rule	Review Period
Procedures governing the processing, investigation, disposition of overcharges, duplicate payment, or overcollection claims.	Part 1008, Subchapter A	1982
Preservation of records	Part 1220, Subchapter C	1982
Reports of motor carriers	Part 1249, Subchapter C	1983
Reports of freight forwarders	Part 1251, Subchapter C	1983
Maintenance of records pertaining to demurrage, detention, and other related accessorial charges by rail common carriers of property	Part 1254 Subchapter C	1984
Passenger service schedules; rail and water carriers	Part 1303, Subchpater D	1984
Passenger and express tariffs and schedules of motor carriers	Part 1306, Subchapter D	1985
Commercial Zones	Part 1056, Subchapter A	1985
Transportation of household goods in interstate or foreign commerce	Part 1056, Subchapter A	1986
Lease and interchange of vehicles	Part 1057, Subchapter A	1986
Regulations governing the adequacy of intercity motor common carrier passenger service	Part 1063 Subchapter A	1986
Practices of for-hire carriers of property participating in trailer -on-flatcar service	Part 1090, Subchapter A	1987

Subject	ICC rule	Review Period
Construction, extension, acquisition or operation of railroad lines	Part 1120, Subchapter A	1987
Abandonment of railroad lines and discontinuance of service	Part 1121 Subchapter A	1987
Discontinuance or change of operation or service	Part 1122, Subchpater A	1987
Control or consolidation of motor carriers or their properties	Part 1134 Subchapter A	1988
Transfers of operating rights	Part 1132 Subchapter A	1988

By the Commission,

(SEAL)

AGATHA L. MERGENOVICH
Secretary

INTERSTATE COMMERCE COMMISSION

EX PARTE NO. 311 (SUB-NO. 4)

MODIFICATION OF THE MOTOR CARRIER FUEL SURCHARGE PROGRAM

Regulatory Flexibility Act Compliance

Under the Regulatory Flexibility Act (RFA) 5 U.S.C. §601 et. seq., 94 Stat. 1166, the Commission is required to state the objectives of and need for, the rule, must summarize the issues raised by the commentors, and must describe the alternatives to the rules we have adopted today. While we are not convinced that this proceeding is governed by the RFA (because the proceeding was instituted before January 1, 1981, and does not adopt rules, but rather dismantles a series of special permission orders which allow for short notice rate relief), we are issuing this RFA statement to be in compliance with the spirit of the new Act.

In the spring of 1979, escalating fuel prices, spurred by shortfalls in petroleum supplies, severely hampered the recoupment of increased fuel costs. In an effort to correct this situation, the Commission issued a series of orders ultimately allowing authorized motor carriers to assess shippers a surcharge for fuel increases based on a percentage of the gross freight revenues, and requiring that the surcharge be paid to owner-operators whether or not it was charged to the shipper. The surcharge amount was computed weekly based on a nationwide survey of fuel costs. It became clear, however, that several distortions were inherent in the percentage-of-revenue basis for computing the surcharge, and became exacerbated as the surcharge rose from 5.6 percent to its present 18 percent. The surcharge program tended to discriminate in favor of carriers which did not use owner-operators on truckload shipments, where the percentage of fuel expense to revenue was lower. There are also inequities resulting from the basis of the surcharge program. Because the surcharge is based on a percentage of the revenue, higher-rated commodities command a higher surcharge than lower-rated commodities. Where distance and operating costs are similar on high and low rated shipments, fuel payments may be overcompensatory and undercompensatory, respectively. In many instances, the surcharge provides a greater amount of money than can be attributed to fuel increases alone. Traffic moving over different distances will also have disparate surcharges assigned.

The Commission, aware of the surcharge program's design and limitations, is by this rule attempting to premise surplus fuel payments to owner-operators on a more equitable and accurate basis. The shipping community reacted initially to the imposition of the surcharge. Most if not all carriers assessed the surcharge in order to remit the amount to their owner-operators under the mandatory pass-through provision of a prior Commission order. Complaints were received by carriers, who cited a drop in the traffic volumes, caused, they alleged, by the surcharge. Shippers and carriers blamed the surcharge for the suddenly increased cost of shipping freight. Because assessment of the surcharge was not mandatory, many carriers charged less than the applicable surcharge in order to maintain a competitive edge. Many owner-operators, the intended beneficiaries of the program, complained that the surcharge was not being paid to them; that they were forced to accept less than the applicable surcharge under threat of retaliatory measures by their carrier lessees; that surcharge computations made by the carrier were incorrect; and that they could not verify the gross transportation charges, as required by our leasing rules (49 C.F.R. 1057.12).

In adopting this rule, the Commission seeks to eliminate the surplus fuel payments program, and inequities that have evolved, and instead assure the owner-operators recoupment of increased fuel costs through another mechanism, a compulsory mileage payment plan based on the increased cost of fuel.

By providing for incorporation of fuel surcharges into the base rate, many abuses by carriers in their individual administration of the former surcharge program will be eliminated. Carriers and owner-operators will have in place a mechanism by which increased fuel costs can in the future be recouped. Shippers will have one item rate to pay, which will be inclusive of all costs involved in transporting freight, including fuel. This feature of our adopted rule was reiterated by many shippers which filed comments as a benefit.

This rule is promulgated under authority of 5 U.S.C. 553(e). For purposes of this analysis, the Small Business Administration's definitions of small entity, as defined in the Regulatory Flexibility Act, will be adopted.

There are three types of small entities which will be affected by the rule; authorized carriers, owner-operators, and shippers. Authorized carriers are those entities or persons holding appropriate common and/or contract carrier operating authority from this Commission, as defined in 49 U.S.C. §10102. Owner-operators are those persons who, generally, lease their equipment and driving services to an authorized carrier in return for a portion of the revenues generated by the traffic transported. Not affected by this rule are owner operators who engage in the transportation of agricultural or other commodities which are exempt from the Commission's jurisdiction under 49 U.S.C §10526(a). The fuel surcharge is not applicable to persons over which the Commission has no jurisdiction.

There are approximately 19,000 authorized passenger and property carriers regulated by the Commission that will be subject to the final rule. Estimates of the number of owner-operators range greatly, from 90,000 to 160,000. Conservative estimates place the number at 120,000. There is a relatively high turnover of owner-operators, and many do not haul regulated commodities consistently. Significant numbers, for example, may transport regulated commodities for six months, and then transport exempt commodities. Exempt loads may constitute a significant number of return hauls. For these reasons, it is difficult to estimate how many owner-operators could be affected by the rule. It is well nigh impossible to determine with any accuracy the number of shippers that would be affected by this rule. It may suffice to say that all small shippers will be affected.

Presently, the surcharge program requires carriers under the Commission's jurisdiction to pay the applicable surcharge to owner-operators. Carriers must compute the surcharge which applies on freight bills and show it as a separate item on all freight bills. This has required a carrier's use of additional personnel either initially or on a continuing basis, for running the surcharge program. Under this rule, the surcharge program as it presently exists will be eliminated. It is estimated that carriers' recordkeeping burdens will be reduced to the extent that there will no longer be a separate fuel component of the rate. However, carriers will be required to expend financial and management resources in determining how much of the surcharge to fold in to the rate base and in implementing this proposal. Resources involved in the actual reimbursement to owner-operators under this rule are expected to be equivalent to that involved in the present system.

To the extent that can be determined, there are no Federal rules which duplicate, overlap, or conflict with the adopted rules in a significant manner.

There are no statutes to which the surcharge program or any alternatives apply.

Four alternatives to the present surcharge program were presented in a decision of April 11, 1980 (45 Fed. Reg. 26399, April 18, 1980). Briefly, they are:

Option A - Mileage-Based Surcharge Plan - Replacement of the current program with a mileage-based plan which would require direct reimbursement to the party (usually the owner-operator) bearing the increased cost of fuel at a given rate per mile. The surcharge level would be compiled from actual or estimated fuel costs per mile factors. (For carriers utilizing no owner-operators no mileage formula would be used; rather, a surcharge would be set at a level designed to compensate the carrier for its increased costs of fuel).

Option B - Mileage-Based Surcharge Plan with Phase Out - In a two-step process, the surcharge program would first be converted to a mileage-based plan as outlined in Option A. The surcharge program would then be phased out concurrently with the implementation of regulatory reforms designed to increase the business opportunities, earning potential, and bargaining power of owner-operators. A transition period could be established, allowing incorporation of the surcharge into the rate base prior to elimination of the program.

Option C - Revenue-Based Surcharge Phase Out - The current surcharge program would be gradually phased out with a probable concurrent incorporation of the surcharge into the rate base. The phaseout and incorporation would be timed to coincide with changes in and implementation of legislation and regulatory policy, with the ultimate benefits for the owner-operator as outlined in Option B.

Option D - Leasing Rule Modification - The leasing rules (49 C.F.R. part 1057) would be modified to obligate the authorized carrier to bear responsibility for fuel cost. This provision would be separate from whatever basic revenue division is accorded the owner-operator under his lease with the carrier. A proposed amendment to 49 C.F.R. §1057.12(f) would require the lease to specify that the fuel cost computation would be based upon a Commission-developed formula, or if no such formula is issued, upon a computation set forth in the lease.

The notice served April 11, 1980 stated that open meetings would be held at strategic points throughout the country so that owner-operators in particular could offer their views to supplement the written comments sought by the notice. After reviewing the comments and the transcripts of the six public hearings, we determined that there was merit to an additional option. On July 31, 1981, we issued a notice of proposed modification of the fuel surcharge program, setting forth the newest alternative.

Option E - Freeze of Surcharge and Separate Agreements - Upon publication of a final notice, the surcharge percentage for motor carriers and freight forwarders would be frozen at the then - authorized level (with two exceptions not here relevant). Sixty days after publication of the final notice, all relevant Special Permissions would be cancelled and any remaining surcharges would be null and void. In the intervening 60-day period, carriers would be required to negotiate separate fuel agreements with their owner-operators providing for the compensation of fuel costs over 63.5 cents per gallon, not to exceed the actual cost of fuel. During this time, a carrier could incorporate all or a portion of the frozen surcharge into its base rate upon submission of a verified statement that it has negotiated fuel agreements with its owner-operators. By the 60th day after service of a final notice, all surcharges would be either incorporated into a base rate or null and void.

COMMENTS

The three major groups of commentors are shippers, owner-operators, and authorized carriers. Owner-operators have overwhelmingly denounced the proposed elimination of the fuel surcharge. Many of their comments, particularly at the public hearings, focused on their continued inability to make ends meet without surplus fuel payments. The rising costs of operating their tractor-trailers made surplus fuel payments a necessity as long as gross revenues, a percentage of which they receive under lease for the use of their equipment and driving services, remained relatively constant. They view the revenue-based surcharge as variable protection for the rising cost of fuel: as fuel rises, so does the surcharge percentage, based on the Commission weekly-developed index. When questioned, most owner-operators would favor, albeit reluctantly, a mileage-based surcharge system.

Shippers are generally unified in their desire to see the program terminated. Many shippers believe they have become embroiled in a problem which exists only between carriers and owner-operators, a problem which should be resolved contractually between the two parties. There is clear resentment that shippers are being made to compensate owner-operators for the latter's increased costs of fuel. That the surcharge on gross revenues is a permissive charge by carriers is of no consolation to shippers. Carriers must compensate owner-operators the surcharge amount whether or not it is billed to shippes as a surcharge and as a practical matter, the full surcharge is applied and collected. Of the options presented, shippers generally find incorporation of the surcharge into the rate base (Option C) and having the authorized carrier pay for fuel (Option D) the least objectionable alternatives.

Carriers' comments were mixed. Many carriers favored only one option; other opposed only one. Still others favored retention of the surcharge program as is while some suggested retention of the surcharge without retaining the mandatory pass-through feature to the owner-operator. Variations of these options were offered with varying complexity depending upon the number of factors to be used in comptuing the final figure.

What follows will be a brief discussion of the problems and benefits associated with each option, along with selected comments received.

Option A - In converting the surcharge program from its present revenue-based derivation to a cents-per-mile basis, the Commission would be required to develop data on truck fuel use in order to establish an average miles-per-gallon figure for fuel compensation purposes. This figure would take into account fuel price and fuel consumption. Each factor, however, is quite variable. Fuel price will vary geographically and will depend on stock supplies of middle petroleum distillates, from which diesel fuel is derived. Actual fuel price also depends on whether the fuel is pumped from a self-service, full-service, or carrier-operated facility. Fuel consumption is the most difficult factor to quantify because every component used in arriving at a fuel consumption figure is variable. Mileage-per-gallon depends on factors such as the type of trailer pulled, weight of load, terrain travelled, type of power train (size and output of engine, in particular), fuel savings' devices such as airshields and radial tires, and the fuel-consciousness of the driver. The driver's driving habits have been cited by more than one commentor as potentially outweighing all other fuel-consumption variables. Our final figure would by necessity have to be an average of all of these factors compiled from all sources. Thus a short haul carrier operating primarily in Florida and Georgia, and a transcontinental carrier operating over several mountain ranges, would have to use the same figure, although in actuality their own figures would probably be quite disparate.

There is also the problem of whether to compensate owner-operators for loaded miles only. Empty miles, including empty miles to pick-up a movement may or may not be compensated for under existing leases, or may be compensated at a lesser amount than for loaded movements. Some general adjustments might be made to account for recognized empty-miles situations which are an inherent characteristic of certain types of operations or the operation of certain types of equipment, such as tank equipment whose average empty mileage approaches 50 percent of all miles traveled (See Empty/Loaded Truck Miles on Interstate Highways During 1976, Interstate Commerce Commission, April, 1977).

For all of the ills inherent in Option A, this alternative endeavors to place the surcharge program on a basis more closely related to actual fuel usage. For many shippers and to the ICC's Office of Special Counsel, Option A is a far from perfect yet accurate, fair, and preferred method of calculating fuel-based cost increases. Carriers and shippers, however, have grafted onto the proposal several modifications which would make the final formula acceptable to them.

How to compute the actual miles for a particular trip is a basic problem. It is generally agreed by owner-operators, carriers and shippers that the Household Goods Mileage Guide is the most comprehensive reference source that exists for computing mileage between two points. However, almost all comments claim it is far from accurate, particularly in the computation of mileage to/from or within large metropolitan areas. The Office of Special Counsel would increase the published mileage by 10 percent. General Mills asks that a mileage circuity factor of 6 percent be added to the published mileage. Other commentors which favored Option A, such as E. L. Murphy Trucking Co., Armco, Inc., and Lesco Trucking Company, Inc., simply do not address the issue of how to deal with empty mileage. At the public hearings, several witness were skeptical that a mutually satisfactory agreed-upon mileage for every trip could be negotiated between owner-operators and carriers. Home Transportation Company hesitates to endorse Option A until additional MPG figures and empty mileage data is accumulated and presented. Home is concerned that the figures can become distorted by an owner-operator who takes side trips for personal business.

Other methods of computing mileage are the use of odometer readings and hub-odometer readings. Beginning and end mileages could be verified, but commentors have advised us that there is a great potential for tampering with the meters, resulting in inaccurate and inequitable mileages.

There is also a wide range of actual fuel mileage per gallon which is offered as an accurate and fair figure. The range exceeds 2 MPG. Carriers which use no owner-operators tend to have higher MPG figures than carriers which use owner-operators. Although provisions could be made for relief upon petition by a carrier, this process would be a time-consuming, costly burden to carriers, and a administrative burden for the Commission.

Option B - Comments were sought as to what reforms would be sufficient to justify elimination of the surcharge program. We noted the eased entry and owner-operator food transportation provisions of the then-pending Motor Carrier Act of 1980. We saw other possible legislative changes redound to the benefit of owner-operators such as rate flexibility, uniformity in State length and weight laws, and penalties against lumping.

There are few comments concerning the option. At the time of our April 11, 1980 notice, the reforms we reviewed were being considered by Congress, but none were assured of passage. Because of the uncertainty tied to pending legislation, several commentors, such as Interstate Motor Freight System, Inc., were hesitant to offer comments. Owner-operators who appeared at the public hearings held similar views, skeptical of endorsing an eventual phase out of the surcharge without knowledge of all the facts (i.e., legislative reforms), information which could not be certain at the time of the public hearings.

Even if all the anticipated legislative relief was enacted, we could not be sure whether shippers would be amenable to tendering freight to independent owner-operators. This issue, a major concern upon which we received little comment, was intended to shed light on the long-term feasiblity of eliminating the surcharge.

Several of the reforms we anticipated then have been enacted, but we have no comments which can guide us in implementing this alternative. We do not have any data indicating whether owner-operators can successfully avail themselves of Motor Carrier Act provisions to such an extent that they can reliquish the fuel surcharge they now receive without adverse economic impact.

Option C - Although the present surcharge system is well understood, it is frought with distortions which are rooted in the use of a revenue percentage as a basis for payments. Rather than grafting on one or a combination of the many suggested modifications to make the current surcharge program more equitable, it may be more appropriate and equitable to gradually phase out the current surcharge and concurrently incorporate it into the rate base. In this way, there would be no drastic modifications of the surcharge prior to its elimination. As noticed, incorporation of the surcharge into the rate base could be timed to coincide with legislative changes that are implemented, as outlined in Option B. The desired effect would allow owner-operators to recover increased revenues through the carrier's higher base rate and improve their net profit as a substitute for the present surcharge payments program. Despite our continued indications that the option elicits concern for the welfare of owner-operators, they are desperately opposed to it. While "maintain the status quo" is the general comment received from owner-operators regarding disposition of the fuel surcharge, some comments evince a reasoned concern for the bottom line difference between the present program and this option. Owner-operators now receive a mandatory pass-through from the carrier of 100 percent of their increased cost of fuel over the base period. The pass-through is required regardless of whether it is charged to the shipper by the carrier. Under Option (C), owner-operators would receive only the percentage of the increased rate as set forth in their lease agreement. Assuming a 75 percent return to an owner-operator, he may today receive 75 percent of a

$100 charge plus $18 surcharge for a typical run. Under Option (C) assuming a full incorporation of the surcharge by the carrier, he would receive 75 percent of the entire $118 rate, or a difference of more than 5 percent less than under the existing surcharge program. Owner-operators also believe that the potential for adversity becomes clearer because there is no requirement in the option that carriers incorporate any or all of the surcharge into their rate base. The possibility of a carrier not incorporating all of the present surcharge, claims the owner-operators, is more catastrophic than their percentage argument; it would mean, for them, a large and sudden reduction in total receipts.

Some carriers do not like this option. The Eastern Industrial Traffic League, Inc., is admantly opposed to this option because there is no justification for phasing the surcharge into the rate base. This proposed action, it says, would perpetuate the present inequitable and excessive program. Tajon, Inc., believes fuel prices are too volatile for a roll-in of the surcharge into the rate base. Even were this not so, Tajon would need a "substantial" increase in its rate base (it suggests 18 percent) in order to avoid any reduction in ultimate compensation to its owner operators. Some shippers, such as the United States Gypsum Company, believe that the unstable politcal situation in the Middle East makes either phase-out option premature. But other comments elicit different views. Armco, Inc., suggests that a revenue-based surcharge system with phase-out would be acceptable if no more than six percent of the surcharge is phased into the rate base (We understand this to mean 6/18 of the present surcharge, as opposed to .06 percent of the surcharge amount). K Mart Corporation believes Option C is most acceptable, but implies the use of a different base date for fuel cost computation (currently January 1, 1979). C&H Transportation Co., Inc., which leases over 1400 tractors from owner-operators, favors this option because the costs to administer the surcharge program (paperwork, managerial, and computer costs) are not offset by additional revenues it can obtain through rate increases. C&H suggests that the surcharge be cut back to 10 percent, and be gradually incorporated into the rate base over a long period of time. Periodic rate increases would accommodate subsequent increases in fuel costs.

Allard Express, Inc., et al., favors this option because of the simplicity of its computation, and the ability to raise its rates, incorporating the surcharge, to recoup its own cost increases. The Mobile (AL) Transportation Rate Bureau, Inc., disfavors an overall fuel surcharge. It advocates Option C, as it believes fuel should properly be included in the rate structure as a cost of doing business. Similar comments are echoed by the American Retail Federation.

Option D - This option has elicited the most negative response of any of the alternatives. Most owner-operators, at public hearings, indicated they did not want the carrier to assume fuel costs because of the infringement upon their concept of being "independent". They also feared the establishment of an average MPG figure for reimbursement of fuel costs. This, they said, would lead to carriers' setting minimum (and optimistic) MPG standards, which many owner-operators' tractors cannot presently meet. Carriers, however, were more vocal. They indicated that the status of all individual independent contractors has come increasingly under attack by the Internal Revenue Service and the National Labor Relations Board. They fear that primary assumption of fuel costs, regardless of any subsequent chargeback to the owner-operator, may result in a finding that their lessors are employees, a finding that could have staggering consequences in the form of increased actual operating costs, increased liability in tort and contract, and increased employer assessments by various federal and State agencies.

Many carriers are particularly upset that the premise of the option lies in the "weak bargaining position" of the owner-operator.

Many parties claim the Commission lacks jurisdiction to alter the leasing rules as proposed. They assert that a rule modification would interfere with the parties' contractual relationship.

In the actual implementation of this alternative, practical problems are seen. For payment based on actual fuel use, there could be fraud in obtaining fuel receipts, or, if credit accounts are established, there could be problems of loss and abuse of credit authorizations, particularly in the trip-leasing context. Problems are also foreseen in allocating actual fuel use to different loads, or in a trip-lease situation (The American Trucking Associations, Inc., contends that this alternative wholly excludes transportation performed under trip-lease, although there is nothing in our proposal which suggests this), as well as in allocating fuel consumed for the personal business of the driver. A fundamental carrier complaint is that owner-operators would have no incentive to protect the carriers' fuel interests. They believe generally that fuel inefficient driving practices will be perpetuated and that their assumption of fuel costs will lead to owner-operators' disinclination to make expenditures for fuel saving devices, all to the carriers' detriment.

Other problems identified with this option are the significant financial and managerial costs to the carrier of operating and administering a fuel reimbursement program. To compensate for these costs, carriers could decrease the percentage of revenue remitted to owner-operators by negotiating new leases. The net dollar amount to the owner-operator, however, would then be the same, thus obviating any gains made by removing from owner-operators the burden of fuel purchases.

Despite concerns voiced by owner-operators and carriers, many commentors (mostly shippers), supported the proposal. They saw not the "weak bargaining position" of the owner-operator, but the responsibility for fuel cost being placed directly on the party who has the most control over being recompensed for fuel cost increases: the carrier. Most comments favoring the proposal recognized that the emergency nature of the fuel crisis has stabilized and even diminished to the point where carriers should be able to assume fuel costs and negotiate with the owner-operator for any corresponding reduction in revenue. Shippers desire the elimination of surcharges from the rate structure, and believe that rates may be easier to comprehend. They believe that fuel is to the carrier a cost of doing business, just as are office and telephone expenses, and that including fuel in the rate helps to rationalize and legitimize the rate structure. Shippers also welcome the relief that this alternative would provide from the distortions between truckload and less-than-truckload traffic. The Colorado Meat Dealers Association, while generally supportive of this option, takes exception to our statement that "the carrier would secure compensation for the increased cost of fuel by the surcharge method." It suggests an amendment providing that any surcharge be supported by actual fuel cost data and rate of return data.

Option E - Comments in response to this most recent notice still evince widely divergent viewpoints on the disposition of the surcharge program. Many owner-operators responded, but their comments by and large asked, pleaded, and demanded that the surcharge program remain unchanged. Their primary concern of the proposal was that, similar to earler roll-in proposals, the net dollar amount remitted to them under the percentage (usually) division in their leases would be less than what they presently receive under the mandatory surcharge pass-through mechanism. On a more basic level, some think that carriers will minimize the surcharge that is incorporated in order to gain a competitive advantage, all to the detriment of the owner-operator.

The Glass Packaging Transportation Council's comments are representative of those of other shippers and shipper-interest associations who believe that incorporation of any amount of the surcharge into the rate base will perpetuate and legitimize the existing disparities in the program. The Council beleives that the matter of compensation for increased fuel costs is best left to negotiation between carriers and owner-operators, and that Commission efforts to fix or regulate actual fuel prices will produce continued distortions that must be underwritten by shippers. Other shippers reject the proposal because of the proposed one-day's notice provision for fuel-related rate increases without benefit of protests. These commentors, of which Swift & Company is representative, believe that their proposed foreclosure from participation in setting rates exacerbates the higher rates shippers must pay based upon their assumption that carriers will fold the maximum surcharge into every tariff.

Other shippers approve of the proposal. Grain Processing Corporation's comments are representative of shippers who believe the incorporation of any or all surcharge will save time and money in cost estimations. Assuming the elimination of a weekly fuel index, these shippers believe that rates will be less volatile and more competitive. These shippers see pragmatic problems with earlier Commission proposals however, particularly those based upon mileage formulae, and believe controversy could develop between shippers and carriers, jeopardizing future rate negotiations.

Carriers which commented are split on the proposal. Many carriers agree with the fold-in procedure but for various reasons do not endorse the separate fuel agreement provision for owner-operators. Some believe it is an intrusion into the ability of carriers to bargain freely. Others believe it is unnecessary given the attrition of owner-operators that is expected if carriers bargain in less than good faith. The alternative to the separate fuel agreement provision, rate adjustments justified by fuel cost data and other information, is not endorsed by other carriers such as Superior Trucking Company, Inc. These commentors see no value in consulting owner-operators and shippers prior to filing a rate adjustment. More importantly, they argue, such consultation would be impractical.

Carriers not favoring the proposal do so because cargo insurance rates are charged on gross freight receipts. A roll-in of the surcharge, they argue, would raise cargo insurance rates. They also believe that to require the carrier to reimburse owner-operators for all fuel costs above the base rate would place burdens on the carrier in the form of monitoring actual fuel purchases.

Several changes were made in our proposals to reflect the concerns expressed by many parties in their written comments and at the oral argument.

We extended from July 1, 1982 to January 31, 1983, the expiration date on publications incorporating the surcharge to reduce tariff publishing burdens.

Many shippers objected to the failure of the proposal to provide them with a right to protest fuel-related rate increases. We have responded to this concern, adequately, we believe, by instituting a right of shippers to protest, within 30 days, any carrier-submitted verification on the basis that rate increases are improper. Rate increases may not be in excess of an amount required to compensate owner-operators for increased costs of fuel. Other bases for protest would include false statements in the carrier's verification or inaccurate data used in computing the new increased rate. These examples are not meant to be comprehensive grounds for shippers' protests.

We have dispensed with a major provision of the July 31, 1981 proposal that separate fuel agreements be filed by carriers. The reason for this deletion is twofold: First, several carriers disputed their ability to negotiate these agreements with all of their owner-operators within the proposed 60-day time period. Second, the requirement would impose an administrative burden on carriers and on the Commission that we think is outweighed by the ability to ensure to owner-operators a Commission-developed amount of compensation on a mileage basis.

We acknowledged carriers' complaints about our proposal with respect to the "zone of rate freedom" provisions of the Motor Carrier Act, 49 U.S.C. 10708(d), applicable to motor carriers and freight forwarders. We proposed that "the rate in effect one year prior to the effective date" of any proposed rate include the fuel surcharge then in effect (13 percent), and that subsequent increases be considered general increases, so that the first five percent of those increases, if and when folded in, would not count against the ten percent zone. We have determined to consider the present maximum allowable surcharge as "the rate in effect one year prior to the effective date" of any proposed rate, so that even where the full amount of the existing surcharge is folded into the rate base, no portion of it would be counted against the carrier's freedom to increase rates generally under the zone of rate freedom provision.

In all other respects, we are satisfied that the Commission's solution to the solution is a fair, equitable, and practical one. The mileage-based revenue system of reimbursement, although noticed as a surcharge method of reimbursement (Option A of the April 11, 1980 decision), received the widest approval as an equitable measure of owner-operator reimbursement, despite the difficulties, discussed earlier, in establishing an average mileage formula. We have utilized the essential features of Option A in its modification to require payments based on mileage, while incorporating the comments of many parties to the effect that the surcharge should be eliminated because the emergency nature of the fuel supply situation has eased.

It is apparent from the comments discussed in an earlier section that the other options considered by the Commission were not adopted because of negative response or inherent problems that are more serious than the option adopted today.

Decided: October 5, 1981

By the Commission, Chairman Taylor, Vice Chairman Clapp, Commissioners Gresham and Gilliam. Vice Chairman concurring in the result.

James H. Bayne
Acting Secretary

(SEAL)

EC
FR-7035-01

SERVICE DATE
JUN 8 1981

INTERSTATE COMMERCE COMMISSION

49 CFR 1047

EX PARTE NO. MC-75 (Sub-No. 3)

AGRICULTURAL COOPERATIVE EXEMPTION

AGENCY: Interstate Commerce Commission

ACTION: Notice of Proposed Rulemaking

SUMMARY: Section 24 of the Motor Carrier Act of 1980 raised the limit on nonfarm, nonmember regulated commodities which agricultural cooperatives could haul, from 15 to 25 percent of a cooperative's annual tonnage. With the increased percentage and the concern about sham cooperatives, Congress provided the Commission with enhanced enforcement powers over agricultural cooperatives hauling nonmember freight. The Commission proposes minimal report and record keeping requirements, and a requirement that non-resident agricultural cooperatives make their reports and records available within the United States. The "Notice to Commission of Intent to Perform Interstate Transportation for Certain Nonmembers Under 49 U.S.C. 10526(a)(5)," Form BOp 102, has been redesignated as OCP 102 and will expire one year from the date filed by the agricultural cooperative. These provisions do not increase economic regulation over cooperatives but provide an improved monitoring mechanism to ensure that cooperatives are operating within the exemption.

DATES: Written comments are due (45 days following publication in the Federal Register).

ADDRESS: The original and, if possible, 15 copies of comments should be sent to:

Ex Parte No. MC-75 (Sub-No. 3)
Room 7219
Office of Consumer Protection
Interstate Commerce Commission
Washington, D. C. 20423

FOR FURTHER INFORMATION CONTACT:

Phyllis Gunn
(202) 275-7475

become null and void. This proposal will not place any extra burden on the cooperatives since they presently must file a Notice annually within 30 days of their annual meetings. This present requirement will be eliminated since the expiration date necessitates an annual filing if the cooperative intends to continue hauling for nonmembers.

Any changes in the information contained in the Notice on file will necessitate another filing of the Notice within 30 days of the changes to replace the outdated Notice. The language in the certification statement on the OCP-102 has been simplified with no substantive changes in content or meaning.

Agricultural Cooperatives Domiciled in Other Countries

Commission investigators are unable to monitor compliance of a cooperative domiciled in a foreign country, if it refuses to make its records available in the United States. The regulation proposed under Section 1047.24 would resolve this problem. It would require the non-resident to maintain copies of records at a designated place in the United States. The OCP 102 would be modified to require the address in the United States where records are maintained.

Without such a regulation, our ability to monitor compliance by a foreign-based agricultural cooperative doing business in the United States, is significantly reduced. Presently, there are seven cooperatives domiciled in Mexico which have filed Notices and the number is likely to increase.

ENVIRONMENTAL AND ENERGY CONSIDERATIONS

This proposed action does not significantly affect the quality of the human environment or the conservation of energy resources.

INITIAL REGULATORY FLEXIBILITY ANALYSIS

Amendments to the regulations are being proposed in response to Congressional concern about sham agricultural cooperatives and transportation for nonmembers which exceed the tonnage and revenue limits established by Congress. By providing additional enforcement powers over cooperatives in Section 24 of the "Motor Carrier Act of 1980," Public Law 96-296, passed July 1, 1980, Congress clearly intended for the agricultural cooperative statute to be fully monitored.

This statute is found under 49 U.S.C. 10526(a)(5). Its present form (except nonmember annual tonnage has been increased from 15 to 25 percent) is due to a statutory amendment made by Congress in 1968 when Public Law 90-433 was enacted. To implement the new legislation, a set of regulations defining the new provisions was adopted under 49 CFR 1047.20 through 1047.23 and 49

CFR 1003.1(a). These regulations were modified in 1978 under Ex Parte No. MC-75 (Sub-No. 1) to define further the agricultural cooperative statute and deal with the fast growing problem of sham cooperatives and other illegal operations. Unfortunately, these regulations were deficient in certain respects, especially concerning non-resident cooperatives and the record keeping responsibilities of all cooperatives. Under 49 U.S.C. 11144(c), Congress had limited the Commission from prescribing the form of any records to be maintained by agricultural cooperatives. However, this prohibition was eliminated under the "Motor Carrier Act of 1980" and a new section was enacted under 49 U.S.C. 10529 which permits the Commission to prescribe a form for records, require filing of reports, and inspection and copying of records. Specific penalties for noncompliance with the requirements are assigned. Thus, the statutory amendments have enabled us to propose amendments to carry out the Congressional mandate in this area.

Overall, the proposed revisions seek to systematize information agricultural cooperatives already must keep to ensure its compliance with the statute. However, basic information regarding farmer members, brokers, and agents supporting the cooperative, will be required for the first time and thus made available to the Commission for compliance monitoring.

Approximately 110 agricultural cooperatives have filed the required Notice since July 1978, and would be affected by these proposed amendments. They can range in size from one driver and truck to a fleet of a hundred or more trucks with drivers. Their operations are often nationwide regardless of the size of the cooperative, although some tend to operate predominately in one region of the country.

The legitimate agricultural cooperative will feel minimal effects from these record keeping requirements since it already keeps such records as part of its regular business practice. On the other hand, the sham cooperative probably maintains few of the records pertaining to members, brokers, agents, and nonmember transportation.

Most of the information required for the trip report will be obtained from the freight bill. Other information will need to be gathered from other sources and included in the trip report. The summary report will consist of the total tonnage and revenue figures contained in trip reports for one quarter. Names and addresses of farmer members, brokers, agents, and sub-agents should already be available to the cooperative.

Although the Commission can now require cooperative associations to submit reports, we are only proposing that such reports and records be maintained for possible inspection at the cooperative's office or in the case of non-resident cooperatives, at a place in the United States. Except for the cooperatives domiciled in a foreign country, there are no reproduction or mailing costs involved and clerical time spent on preparing records is greatly reduced.

The record and report keeping requirements will require at most, routine bookkeeping skills while other tasks may be accomplished by clerical personnel.

There are no other Federal rules which duplicate, overlap or conflict with the proposed rules.

The proposed amended regulations are straightforward and simple to comprehend. There are no significant alternatives which would accomplish the stated objectives. These proposed regulations will have a slight economic impact on relatively few small entities. To try to minimize the economic impact would require forfeiting some of the stated objectives and, thus, render the rulemaking unworthwhile.

A copy of this notice will be served on the Administrator of the Small Business Administration. Any input that agency intends to make should be presented within the 45-day comment period.

AMENDMENTS

We propose to amend Part 1047, Subtitle B, Chapter X of Title 49, of the Code of Federal Regulations, as follows:

1. In Section 1047.20, paragraphs (a) and (b) are revised and paragraph (l) is added to read as follows:

§ 1047.20 Definitions

* * * * *

(a) Cooperative Association. The term "cooperative association" means an association which conforms to the following definition in the Agricultural Marketing Act, approved June 15, 1929, as amended (12 U.S.C. 1141j): as used in this act, the term "cooperative association" means any association in which farmers act together in processing, preparing for market, handling, and/or marketing the farm products of persons so engaged, and also means any association in which farmers act together in purchasing, testing, grading, processing, distributing, and/or furnishing farm supplies and/or farm business services. Provided, however, that such associations are operated for the mutual benefit of the members thereof as such producers or purchasers and conform to one or both of the following requirements: First. That no member of the association is allowed more than one vote because of the amount of stock or membership capital he may own therein; and Second. That the association does not pay dividends on stock or membership capital in excess of 8 per centum per annum. And in any case to the following: Third. That the association shall not deal in farm products, farms supplies, and farm business services with or for nonmembers in an amount greater in value than the total amount of such business transacted by it with or for members. All business transacted by any cooperative association for or on behalf of the United States or any agency or instrumentality thereof shall be disregarded in determining the volume of member and nonmember business transacted by such association.

Mr. **Taylor**. In response to a series of meetings with the SBA's Office of the Chief Counsel for Advocacy, the Commission, on September 18, 1981, prepared and distributed to all ICC personnel involved in rulemaking proceedings a new administrative issuance to insure that our rulemakings would be in full technical compliance with the act.

The intent of this issuance is: (1) To assure that the Commission promulgates rules that have no adverse significant economic impact on small entities, and (2) to assure that all ongoing and future rulemakings contain an initial or final regulatory flexibility analysis if required.

Before responding to the questions which you addressed to us, I would like to say again that the Commission continues to be sympathetic toward small entities and, while I am Chairman, we will make every effort to comply fully with both the spirit and the technical provisions of the act.

Your first inquiry is whether the Commission is presently in full compliance with the Regulatory Flexibility Act. With the exception noted later in our response to your question No. 4, I believe that the Commission is now in full compliance with the act.

In response to your question on regulatory liaison, the Commission initially designated the Assistant Managing Director to serve as our Regulatory Flexibility Officer.

Recently, however, the Associate Director of the Office of Proceedings has been designated to serve in this position because our difficulties in complying with the act related primarily to sections 603, 604, and 605(b)—those sections pertaining to rulemakings.

We felt that it is more appropriate for the Associate Director of Proceedings to be the Regulatory Flexibility Officer, since he is more directly involved in the rulemaking process than the original designee.

The responsibilities of our Regulatory Flexibility Officer are clear. He is fully responsible for reviewing all notices of proposed rulemaking and final rules to make sure that they fully comport with the pertinent sections of the act.

Further, he is responsible for insuring the timely publication of our regulatory agenda and the periodic review of rules. Finally, his responsibilities call for maintenance of a close liaison with the SBA's Office of the Chief Counsel for Advocacy and the submission to SBA of copies of any and all required documents.

In addition, our Small Business Assistance Office will render all possible assistance to the Regulatory Flexibility Officer in coordinating agency activities and processes with SBA.

The third question, you pose, asks if we have encountered any major problems in implementing the law or with specific language requirements of the act.

As noted above, we have encountered some problems in implementing the act, but we believe they have been resolved. With respect to interpretation of specific language, there is still some question as to the meaning of the term significant economic impact as it is used in section 605(b) of the act.

Clearly, whenever a proposed rule might have a significant adverse economic impact on small entities, we are obligated to prepare initial and final regulatory flexibility analyses. However, we are still uncertain as to whether such analyses are required under sections 603 and 604, when a rule would have a significant beneficial impact on small entities. For example, this Agency recently eliminated the requirement that small motor carriers file annual reports with the Commission. Since large carriers are still required to file these reports, we see this action as being one which is economically beneficial to small carriers.

Did Congress intend to mandate preparation of regulatory flexibility analyses in rulemakings, where the significant economic impact will be beneficial to small entities? At this time, we are proceeding under the assumption that all rulemakings having a significant economic impact on small entities, whether adverse or beneficial, and that they are covered under the act.

In response to question No. 4, we have not yet filed our 10-year periodic review plan. However, the plan is presently before the Commission for a vote, and I expect that it will be published before the end of the month. As soon as the plan is finalized, we will provide your subcommittee with a copy.

Finally, in response to your requests in questions Nos. 5, 6, and 7, I have available today copies of an initial regulatory flexibility analysis prepared by the Commission—I have already made reference to this—the ICC's April agenda, and a draft of the October agenda.

In addition, I have a copy of a final regulatory flexibility analysis issued by the Commission in Ex Parte No. 311—Sub-No. 4—"Modification of the Motor Carrier Fuel Surcharge Program."

I think, Mr. Chairman, you have already agreed to make these matters part of the record. This concludes my remarks. I would be glad to try and answer any questions that you may have.

Mr. IRELAND. Thank you, Mr. Taylor.

For our record, the Regulatory Flexibility Officer that you related to, who is that?

Mr. TAYLOR. The name, Mr. Chairman, is Carl Bausch.

Mr. IRELAND. You referred to the administrative issuance, which is as good a term as any. I think some of the others were calling them guidelines. Could we have a copy of those as well?

Mr. TAYLOR. You certainly can. I have one with me. It's entitled—"Implementation of Regulatory Flexibility Act." We can leave that with the other material to be incorporated in the record, if you like.

Mr. IRELAND. You referred to that periodic review. I guess were due in July, so is there any particular reason that that's late, other than the normal reasons?

Mr. TAYLOR. While I am very very concerned about our paying very strict attention to the Regulatory Flexibility Act, I don't know how interested the group was before me. We were in a transitional period in July, and I guess we didn't get around to it. We should have, and I apologize for its being late.

Mr. IRELAND. We understand those kinds of things. I wanted to know if they were the ones that don't fall into that category.

I would say, in response to not knowing what others have done, I think not only is the spirit of your Agency very good along this line, so have most of others been the same way. It is amazing what can be done to help the guy we are supposed to be helping when that kind of attitude is there. It can be a sharp contrast when the attitude is that the Agency is just trying to serve personnel in the Agency, and is counterproductive for the U.S. Government and for ths small businessman.

I think that Congress has reason to be pleased with the results.

Mr. TAYLOR. Thank you, Mr. Chairman. I appreciate those comments.

Mr. IRELAND. In mentioning your discussion of a beneficial activity, and whether the act must be adhered to. Our position in the legislative history of the act, is that the act must be adhered to. The reason is that we feel even though an Agency might say it's going to be beneficial, often times you find that there are things that are yet more beneficial. As well, sometimes the agencies have found that anything that's beneficial in their wisdom, turns out later to have some purpose.

So I think you have taken the right direction that we really need to go through the process. Otherwise, we fall into that trap of saying that all wisdom comes from the Agency, and I think that's a trap that the American public doesn't like.

Mr. TAYLOR. Neither do I, Mr. Chairman, because I can assure you it doesn't all come from our minds.

Mr. IRELAND. There is a proposal before you to regulate hazardous waste and transportation of it. Could you comment on that, and how it affects small business entities under your jurisdiction?

Mr. TAYLOR. I would be glad to, Mr. Chairman.

The Commission does not regulate nontoxic waste. Such waste is categorized, as far as we are concerned, as trash or debris, and possesses really only a negative property value.

We have had a case, *Trucking Common Carrier Application,* the citation for which is 99 MCC 109, at page 110, which definitely indicates that hazardous waste is not property subject to regulation.

However, the question of whether authority from the Commission is required to transport hazardous materials and toxic waste is presently before the Commission in No. MC-10799, *Petition for the Declaratory Order of Transportation of Hazardous Waste.*

In administrative ruling 130, the Office of Consumer Protection tentatively ruled that authority is required for-hire transportation of hazardous materials and toxic waste. To enhance safety a particular carrier must show us that it is fit to haul hazardous waste as we are the people that issue the permits.

However, I want to point out that that ruling of the Office of Consumer Protection is informal in nature. The Hazardous Service Administration have requested a formal ruling that the transportation of hazardous waste is exempt from Commission regulation. Presently the matter is pending before the Commission and will be resolved. I guess I am really not at liberty to say too much more about this proceeding.

Mr. IRELAND. OK. Mr. Weber.

Mr. WEBER of Ohio. Thank you, very much. I was just wondering, Mr. Taylor, if any of the impact of your activities under the Reg. Flex. Act has filtered down to small businesses yet. Have you had any feedback from the small businesses which are regulated by ICC, as to the working of this act?

Mr. **Taylor**. I am not personally aware of any. I can ask Mr. Gaillard if he has any studies or submissions in respect to that. I do think the act's impact is going to be positive, but in terms of having the expressions to that effort, or having conducted any studies to demonstrate that result, I am not aware of any.

I guess the fuel surcharge proceeding is our best example of something that we have done that affects the small businessman. While many people said we were going to have all kinds of problems with that program we adopted it, we haven't had any so far. But I think it's too early to tell what the actual impact is.

Mr. **Weber** of Ohio. Are there any other regulations that you can cite that have been changing, as a result of the Reg. Flex. Act?

Mr. **Taylor**. Eliminating the report of class III carriers, Mr. Gaillard tells me, is another example.

Mr. **Weber** of Ohio. Eliminating the reports?

Mr. **Taylor**. Why don't I let Mr. Gaillard answer that question himself.

Mr. **Gaillard**. Mr. Weber, there are a number of intangible results of Reg. Flex., which haven't filtered through yet, and we don't know what the results are actually going to be. We have not had an opportunity, in most of the production, to quantify. And unquestionably, the Reg. Flexs. were asked to do this to some extent. We haven't had an opportunity to do that in some of the cases presented.

In the case cited by the chairman, we have eliminated the filing of annual reports by the class III carriers. We know that we will have the group flex, because it eliminates a substantial amount of paperwork. So we know the result of that.

It is difficult at this time to quantify exactly in dollars what this means. There are a number of others on the way.

Mr. Weber there are some other regulations, as far as Reg. Flex. conclusions are concerned that we have just now gotten out. I presume that in the fuel surcharge area we can get some kind of result very soon. I hope it is going to work.

It is a simple formula. We tried to create something quickly, and at the same time come up with something that everyone is going to live with.

The factor involved is 1-cent-per-mile factor on a half-cent-per-mile basis. At the present time, it is not going to be effective for approximately another 70 days, but it is 14 cents a mile, and it is a very easy thing for small businesses to deal with.

It was really designed, more than anything else, with that in mind, so that there would be something.

Mr. **Weber** of Ohio. Is that regulation going to treat small businesses better than large businesses?

Mr. **Taylor**. Well, as far as the owner-operator is concerned, the owner-operators are small business people, and I guess too, there are some benefit concerns of very small shippers as well. But, I think you would have to say that, whether the impact of the small businessman in our climate and others, is an owner-operator who is out there with one rig, and has wanted to be able to perform with very minimum amount of regulations, particularly the minimum amount of ICC regulations that have been adjusted?

Mr. **Gaillard**. Yes; we think so.

Mr. **Taylor**. Well, I mentioned the fact that we have undertaken a program consistent with the administration's approach initiated in August. We are looking at every single regulation. While this wasn't done with just Reg. Flex. in mind, it is part of the regulatory flex reform.

Every single regulation that we have on the books is being reviewed with each bureau and office having presented my office with a list of regulations pertaining to their functions.

Now they are being prioritized with the idea being to get rid of every single one of those that no has longer any purpose, that is, unnecessary or burdensome, or that is unenforceable. Particularly, have regulations for regulations' sake is a system which we shouldn't tolorate.

I don't know how our budget is going to come out in terms of what we are able to handle, but there will be some Reg. Flex. applications in that whole general reform area. And each bureau and office has submitted a substance list, and we expect to do a wholesale house cleaning, and get rid of a lot of the regulations.

Mr. **Weber** of Ohio. The point of my question is, there is some qualifying going on with regards to existing regulations. But as far as the small businessman is concerned, that doesn't have any impact on the small businessman, unless one of those regulations gets changed. And I think you are in midstream of that process right now.

Mr. **Taylor**. We really are.

Mr. **Weber** of Ohio. It is premature to expect regulations to have been changed by now.

Mr. **Taylor**. Now I haven't been on board 4 months yet. I think in another 6 months, we will have some very tangibles.

Mr. **Weber** of Ohio. I appreciate hearing your progress that you are making. I commend you for it. Keep up with that kind of work.

Mr. **Taylor**. Thank you very much.

Mr. **Ireland**. I have one last question, Chairman Taylor, and that is on the private fleet issue. Can you comment on the timetable for a decision along that line?

Mr. **Taylor**. I take it, Mr. Chairman, you mean by that the leasing of the private carrier, which owner-operators are extremely interested in.

There are also two other matters of retention charges, and general leasing rules. General leasing rules are out now for consideration, and the retention charges are about to come. There is a draft of those that is floating around, to be circulated to the Commission soon.

In response to your question, we did hold an oral argument on the leasing of the private carrier issues. From the timetable standpoint, I have a little bit of difficulty as we have two new fellows coming on who will probably want to participate and, as a matter of fact, should.

I would expect they will be on board by the end of the month or early November. I don't think we will be ready to decide that case until then, but the indications are we hope to have a decision on that matter sometime in the early part of, or hopefully no later than the middle of, November. That is what I am shooting for.

Don't hold me accountable if it turns out to be a little bit later in November, but certainly the target date right now is the middle of next month.

Mr. **Ireland**. That's good. I am sure at least the two gentlemen here enjoy hearing somebody that's got a timetable for things like that. That's reassuring, and we appreciate it. Thank you very much.

Mr. **Taylor**. Thank you, sir.

Mr. **Ireland**. Our next witness is from the Department of Transportation, General Counsel John Fowler.

TESTIMONY OF JOHN FOWLER, GENERAL COUNSEL, DEPARTMENT OF TRANSPORTATION; ACCOMPANIED BY NEIL EISNER, ASSISTANT GENERAL COUNSEL FOR REGULATION AND ENFORCEMENT, DOT

Mr. **Fowler**. Good morning, Mr. Chairman.

Mr. **Ireland**. Good morning.

Mr. **Fowler**. To provide as much time as possible for your questions, Mr. Chairman, I would ask that my full written statement be entered into the record and, if there is no objection, I will highlight the most important points in this statement.

Mr. **Ireland**. Without objection.

[Mr. Fowler's prepared statement follows:]

PREPARED STATEMENT OF JOHN FOWLER, GENERAL COUNSEL, DEPARTMENT OF TRANSPORTATION

INTRODUCTION

MR. CHAIRMAN AND MEMBERS OF THIS COMMITTEE:

I AM PLEASED TO BE HERE TO TESTIFY ABOUT THE REGULATORY FLEXIBIILTY ACT (RFA) AND HOW THE DEPARTMENT OF TRANSPORTATION (DOT) HAS IMPLEMENTED IT. NEIL EISNER, ASSISTANT GENERAL COUNSEL FOR REGULATION AND ENFORCEMENT, IS WITH ME TODAY. HE HAS THE GENERAL RESPONSIBILITY FOR OVERSIGHT OF DOT'S REGULATORY ACTIVITY, INCLUDING COMPLIANCE WITH PRESIDENT REAGAN'S EXECUTIVE ORDER 12291 ON "FEDERAL REGULATION." AS OUR REGULATORY FLEXIBILITY OFFICER, HE IS OUR LIAISON WITH THE SMALL BUSINESS ADMINISTRATION'S (SBA) OFFICE OF ADVOCACY ON MATTERS RELATED TO THE REGULATORY FLEXIBILITY ACT.

BACKGROUND

LET ME BEGIN BY GIVING YOU A BRIEF OVERVIEW OF OUR REGULATORY ACTIVITIES. EACH OF DOT'S NINE OPERATING ADMINISTRATIONS, IN ADDITION TO THE OFFICE

OF THE SECRETARY, HAS AUTHORITY TO ISSUE REGULATIONS. THESE ADMINISTRATIONS ARE:

THE UNITED STATES COAST GUARD
FEDERAL AVIATION ADMINISTRATION
FEDERAL HIGHWAY ADMINISTRATION
FEDERAL RAILROAD ADMINISTRATION
NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION
URBAN MASS TRANSPORTATION ADMINISTRATION
SAINT LAWRENCE SEAWAY DEVELOPMENT CORPORATION
RESEARCH AND SPECIAL PROGRAMS ADMINISTRATION
MARITIME ADMINISTRATION

THE SCOPE OF DOT'S CURRENT REGULATORY ACTIVITY, INCLUDING THOSE EXISTING REGULATIONS UNDER REVIEW, IS DESCRIBED IN THE SEMI-ANNUAL REGULATIONS AGENDA AND REVIEW LIST THAT I GAVE YOU BEFORE THIS HEARING. MY OFFICE PROVIDES GUIDANCE TO THE ENTIRE DEPARTMENT CONCERNING THIS REGULATORY ACTIVITY WE ALSO MONITOR THAT ACTIVITY TO ENSURE CONFORMANCE WITH APPLICABLE OBJECTIVES AND LEGAL REQUIREMENTS. THIS GUIDANCE AND MONITORING INCLUDES COMPLIANCE WITH THE REGULATORY FLEXIBILITY ACT. I'D LIKE TO HIGHLIGHT WHAT WE HAVE BEEN DOING TO IMPLEMENT THE ACT.

REGULATORY DEVELOPMENT

AGENDA AND RFA REVIEW PLANS

FOR MANY YEARS, DOT HAS RECOGNIZED THE IMPORTANCE OF GATHERING COMPLETE AND ACCURATE INFORMATION WHILE WE ARE DEVELOPING A REGULATION. THIS INCLUDES HELPING SMALL ENTITIES VOICE THEIR OPINIONS -- AND BE HEARD. THE AGENDA THAT I MENTIONED EARLIER IS ONE OF THE BEST TOOLS WE HAVE DEVELOPED FOR INFORMING EVERYONE -- INCLUDING SMALL ENTITIES -- ABOUT DOT'S REGULATORY ACTIVITY.

AN EXTREMELY IMPORTANT AND DISTINGUISHING CHARACTERISTIC OF OUR AGENDA IS THAT IT IDENTIFIES ALL DOT REGULATORY ACTIVITY. IT IS NOT LIMITED TO THOSE REGULATIONS THAT WE BELIEVE ARE MAJOR (UNDER EXECUTIVE ORDER 12291) OR THAT WILL REQUIRE A REGULATORY FLEXIBILITY ANALYSIS OR A REVIEW (UNDER THE RFA). THIS APPROACH HAS A NUMBER OF ADVANTAGES. IT HELPS THE PUBLIC, AS WELL AS THOSE OF US WITHIN THE GOVERNMENT, TO COMPARE MAJOR AND NON-MAJOR REGULATIONS, AND IT FACILITATES COMPARISONS OF REGULATIONS REQUIRING A REGULATORY FLEXIBILITY ANALYSIS WITH THOSE THAT DO NOT. CONSEQUENTLY, OTHERS HAVE A CHANCE TO IDENTIFY FOR US THOSE REGULATIONS THEY BELIEVE WE HAVE MISCLASSIFIED; THEY CAN ALSO REVIEW AN ENTRY FOR A REGULATION NOT REQUIRED TO BE ON THE AGENDA AND TELL US THAT THEY BELIEVE IT WILL NEED A REGULATORY FLEXIBILITY ANALYSIS. IT ALSO HELPS PEOPLE SEE THE SCOPE OF DOT'S REGULATORY ACTIVITY AND DISCERN GENERAL TRENDS. FOR EXAMPLE, IN THE CURRENT AGENDA, MANY RULEMAKINGS IDENTIFIED AS REQUIRING A REGULATORY FLEXIBILITY ANALYSIS HAVE EITHER BEEN "TERMINATED" OR FURTHER ACTION ON THEM IS STILL BEING DETERMINED.

AND THERE ARE OTHER WAYS WE KEEP THE PUBLIC INFORMED. BESIDES PUBLISHING THE AGENDA IN THE FEDERAL REGISTER, WE MAIL IT DIRECTLY TO NUMEROUS INDIVIDUALS, BUSINESSES, STATE AND LOCAL GOVERNMENTS AND ORGANIZATIONS.

IN ADDITION, THE AGENDA CONTAINS INSTRUCTIONS TELLING PEOPLE HOW TO GET ON OUR MAILING LISTS TO RECEIVE FUTURE COPIES OF IT AS WELL AS ANY PARTICULAR REGULATORY DOCUMENT IN WHICH THEY ARE INTERESTED. ONCE PEOPLE ARE ON THE LISTS, IT ISN'T NECESSARY TO READ THE FEDERAL REGISTER TO KEEP ABREAST OF DOT'S REGULATORY ACTIVITY. YOU SIMPLY IDENTIFY REGULATIONS YOU ARE INTERESTED IN, FOLLOW THE INSTRUCTIONS, AND YOU WILL RECEIVE COPIES OF THE REGULATORY DOCUMENTS.

WE HAVE MADE A SPECIAL EFFORT TO ALERT SMALL ENTITIES TO OUR AGENDA. BEFORE PUBLISHING OUR APRIL 1981 AGENDA, FOR EXAMPLE, WE WORKED WITH SBA'S OFFICE OF ADVOCACY TO DEVELOP A LENGTHY LIST OF PUBLICATIONS AND ORGANIZATIONS INVOLVED WITH SMALL ENTITIES THAT MIGHT BE INTERESTED IN DOT'S REGULATIONS. WE ALSO USED SEVERAL OTHER DEPARTMENTAL PUBLICATIONS THAT ARE MAILED DIRECTLY TO SMALL ENTITIES TO ADVERTISE THE EXISTENCE OF THE AGENDA MAILING LIST. WE ADDED THE NEW NAMES WE RECEIVED TO OUR EXISTING LIST, AND NOW MAIL THE AGENDA TO OVER 250 ADDRESSES, MORE THAN HALF OF WHICH WE BELIEVE ARE SMALL ENTITIES OR ORGANIZATIONS REPRESENTING THEM.

I WOULD ALSO LIKE TO MENTION THE STEPS WE TOOK WITH RESPECT TO OUR AGENDA AND OUR REGULATORY REVIEWS SPECIFICALLY TO COMPLY WITH THE RFA. FIRST, IN OUR APRIL AGENDA WE BEGAN IDENTIFYING ALL REGULATIONS WITHIN THE DEPARTMENT THAT WOULD REQUIRE A REGULATORY FLEXIBILITY ANALYSIS. OUR RFA REVIEW PLANS WERE PUBLISHED, IN ACCORDANCE WITH THE STATUTORY DEADLINE, ON JUNE 29 AND JUNE 30, 1981. OUR OCTOBER AGENDA THEN INCORPORATED THESE PLANS BY ADDING TO OUR REVIEW LIST THE LARGE NUMBER OF REGULATIONS THAT WOULD UNDERGO REVIEW IN ACCORDANCE WITH THE RFA.

OTHER ACTION

WE DO A NUMBER OF OTHER THINGS,DURING THE DEVELOPMENT OF A REGULATION, THAT I BELIEVE ARE WORTH MENTIONING BECAUSE OF THE ASSISTANCE THEY PROVIDE TO SMALL ENTITIES. FOR EXAMPLE, THE DEPARTMENT DOES A REGULATORY EVALUATION (AN ECONOMIC ANALYSIS) FOR ALL OF ITS REGULATIONS. WE DON'T CONFINE OURSELVES TO THOSE THAT ARE MAJOR (AND REQUIRE A REGULATORY IMPACT ANALYSIS) OR THOSE THAT HAVE A SIGNIFICANT IMPACT ON A SUBSTANTIAL NUMBER OF SMALL ENTITIES (AND REQUIRE A REGULATORY FLEXIBILITY ANALYSIS). THIS REGULATORY EVALUATION IS MADE PUBLICLY AVAILABLE. IT ENABLES EVERYONE TO REVIEW THE ECONOMIC DATA WE HAVE. (FOR VERY MINOR REGULATIONS, WE MAY SIMPLY STATE THAT THE IMPACT IS MINIMAL.)

WE HAVE ALSO TRIED TO MAKE THINGS EASIER FOR PEOPLE WHO USE THE FEDERAL REGISTER BY PUBLISHING ALL DOT DOCUMENTS ON EITHER MONDAY OR THURSDAY, UNLESS THERE IS AN EMERGENCY. AND WE HAVE ATTEMPTED TO EXTEND THE USE OF SUCH THINGS AS ADVANCE NOTICES OF PROPOSED RULEMAKING TO ENABLE THE PUBLIC TO GIVE US GENERAL COMMENTS BEFORE WE START WORKING OUT THE DETAILS OF A PROPOSED RULE. RECOGNIZING THAT SMALL ENTITIES FREQUENTLY NEED MORE TIME THAN OTHERS TO PREPARE THEIR COMMENTS, WE GENERALLY PROVIDE MORE TIME THAN REQUIRED FOR COMMENT PERIODS ON PROPOSED REGULATIONS (AT LEAST 60 DAYS FOR SIGNIFICANT REGULATIONS AND GENERALLY 45 DAYS FOR NONSIGNIFICANT REGULATIONS). WE ALSO GRANT EXTENSIONS UNDER APPROPRIATE CIRCUMSTANCES. IN ADDITION, IT IS THE DEPARTMENT'S GENERAL POLICY THAT "TO THE MAXIMUM EXTENT POSSIBLE, NOTICE AND AN OPPORTUNITY TO COMMENT ON REGULATIONS SHOULD BE PROVIDED TO THE PUBLIC, EVEN WHEN NOT REQUIRED BY STATUTE, IF SUCH ACTION COULD REASONABLY BE ANTICIPATED TO RESULT IN THE RECEIPT OF USEFUL INFORMATION."

WE ALSO TRY TO USE PUBLIC HEARINGS AS OFTEN AS POSSIBLE. ON OCCASION, WE TRY TO PROVIDE EXPERT ASSISTANCE TO THE PUBLIC. FOR EXAMPLE, WE MAY PROVIDE EXPERTS ON THE SUBJECT AREA BEFORE A PUBLIC HEARING BEGINS TO EXPLAIN OR DISCUSS VARIOUS ASPECTS OF THE RULEMAKING WITH INTERESTED PEOPLE. SOMETIMES WE PROVIDE REBUTTAL PERIODS AT THE END OF A COMMENT PERIOD OR DURING A HEARING. FINALLY, BECAUSE WE RECOGNIZE THAT SOME SMALL ENTITIES AND INDIVIDUALS CANNOT ATTEND HEARINGS DURING NORMAL BUSINESS HOURS, WE HOLD SOME OF OUR HEARINGS IN THE EVENINGS. ALTHOUGH EACH OF THESE EFFORTS SHOULD HELP EVERYONE, WE THINK THEY ARE ESPECIALLY BENEFICIAL TO SMALL ENTITIES BECAUSE OF THEIR SIZE AND THE DIFFICULTY SOME HAVE IN BEING HEARD.

REGULATORY FLEXIBILITY ANALYSES

I WOULD LIKE TO MENTION OUR ACTIVITY WITH RESPECT TO ONE OF THE MORE IMPORTANT REQUIREMENTS OF THE RFA -- THE NEED TO PREPARE A REGULATORY FLEXIBILITY ANALYSIS. WE HAVE PREPARED ONE INITIAL AND ONE FINAL REGULATORY FLEXIBILITY ANALYSIS AT DOT. BOTH INVOLVED THE ISSUE OF MINIMUM STANDARDS OF FINANCIAL RESPONSIBILITY FOR MOTOR CARRIERS (REQUIRED BY SECTION 30 OF THE MOTOR CARRIER ACT OF 1980).

WE HAVE ALSO CONSIDERED THE IMPACT OF OUR RULEMAKINGS ON SMALL ENTITIES WHEN THAT IMPACT IS LESS THAN "SIGNIFICANT" OR THE NUMBER AFFECTED IS LESS THAN SUBSTANTIAL. TWO RECENT NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION (NHTSA) RULEMAKINGS RELATING TO AUTOMOBILE AUTOMATIC OCCUPANT PROTECTION AND BUMPER STANDARDS ARE ILLUSTRATIVE. ALTHOUGH IT WAS FOUND THAT A REGULATORY FLEXIBILITY ANALYSIS WAS NOT REQUIRED

BY THE RFA, THE DEPARTMENT STILL EVALUATED THE POSSIBLE IMPACT ON SMALL ENTITIES. THE FAA HAS CONDUCTED SIMILAR EVALUATIONS.

ENABLING STATUTE LIMITATIONS

TURNING NOW TO ENABLING STATUTE LIMITATIONS, WHICH HAVE A BEARING ON THE RFA'S IMPLEMENTATION, LET ME STRESS THAT ONE OF THE DEPARTMENT'S PRIMARY FUNCTIONS IS THE DEVELOPMENT OF SAFETY REGULATIONS. FREQUENTLY, THE STATUTES UNDER WHICH WE OPERATE LEAVE US LITTLE LATITUDE TO ADDRESS THE SPECIAL PROBLEMS OF SMALL ENTITIES. WHEN A STATUTE, FOR EXAMPLE, REQUIRES US TO SET MINIMUM STANDARDS FOR EVERYONE OPERATING IN A PARTICULAR AREA, IT IS DIFFICULT FOR US TO ALLOW SMALL ENTITIES TO DO SOMETHING LESS. WE HAVE, HOWEVER, USED DIFFERENT REGULATORY APPROACHES THAT DO NOT CONFLICT WITH OUR STATUTORY OBJECTIVES AND THAT MINIMIZE THE ECONOMIC IMPACT OUR RULES HAVE ON SMALL ENTITIES. FOR INSTANCE, THE DEPARTMENT DOES PROVIDE FOR TIERING, OR DIFFERENT LEVELS OF RESPONSIBILITY FOR SMALL ENTITIES. LET ME GIVE YOU THREE SPECIFIC EXAMPLES:

THE FEDERAL AVIATION ADMINISTRATION TAILORS ITS AIRCRAFT OPERATING RULES TO THE PARTICULAR CONDITIONS OF SMALL AIRCRAFT OPERATORS. THE FEDERAL HIGHWAY ADMINISTRATION RELIEVES SMALL TRUCKING COMPANIES OF CERTAN INSPECTION, REPORTING AND RECORDKEEPING REQUIREMENTS, AND THE URBAN MASS TRANSPORTATION ADMINISTRATION TIERS REGULATIONS FOR AWARDING GRANTS TO SMALL URBAN AREAS.

ANOTHER GOOD EXAMPLE OF OUR EFFORTS IN THIS AREA IS A NOTICE THE FEDERAL RAILROAD ADMINISTRATION (FRA) PUBLISHED IN THE *FEDERAL REGISTER* LAST

SUMMER. WE CAN PROVIDE YOU WITH COPIES OF THE NOTICE, BUT I'D LIKE TO READ A PART OF IT TO YOU TO ILLUSTRATE HOW WE ARE RESPONDING TO THE KINDS OF CONCERNS THE REGULATORY FLEXIBILITY ACT ADDRESSES. FRA'S ANALYSIS OF ACCIDENT DATA INDICATED "THAT THE SMALL RAILROADS ACCOUNT FOR A VERY SMALL PORTION OF THE TOTAL NUMBER OF PERSONS KILLED OR INJURED DURING" THE PERIOD OF THE STUDY. BASED ON THIS, THE AGENCY STATED THAT IT "BELIEVES THAT THIS FAVORABLE ACCIDENT RECORD OF SMALL RAILROADS IS THE RESULT OF SEVERAL FACTORS, INCLUDING THE RELATIVELY SLOW SPEED OF THE OPERATIONS, THE LOW VOLUME OF HAZARDOUS MATERIALS BEING HANDLED, AND THE FACT THAT MANY OF THESE RAILROADS OPERATE ALMOST EXCLUSIVELY DURING DAYLIGHT HOURS AND HAVE A DEGREE OF CONSISTENCY IN THEIR LIMITED OPERATIONS THAT IS NOT FOUND ON LARGE RAILROADS." FRA DID NOT WANT TO RELY ON THESE ABSOLUTE NUMBERS SINCE IT THOUGHT THIS COULD BE MISLEADING. THEREFORE, THE AGENCY ASKED FOR ADVICE AND COMMENT FROM THE PUBLIC ON WHETHER A SPECIFIC CATEGORY COULD BE CREATED FOR THESE SMALL RAILROADS AND WHETHER THEY SHOULD BE TREATED DIFFERENTLY UNDER FRA'S SAFETY REGULATIONS.

ANOTHER IMPORTANT WAY IN WHICH WE DEAL WITH SMALL ENTITIES INVOLVES OUR ACTION AFTER REGULATIONS ARE ISSUED. IN APPROPRIATE AND UNIQUE CIRCUMSTANCES, WE CAN GRANT EXEMPTIONS FROM EXISTING REGULATIONS. WHEN SAFETY IS A CONCERN, THE EXEMPTION CAN TAKE INTO ACCOUNT THE SIZE OF THE AFFECTED PARTY AND EXEMPT IT FROM THE SPECIFIC REQUIREMENTS OF THE REGULATION, OR THE EXEMPTION CAN REQUIRE THE PARTY TO ACT IN A SPECIFIED MANNER THAT PROVIDES AN EQUIVALENT LEVEL OF SAFETY BUT MAKES COMPLIANCE EASIER FOR SMALL ENTITIES. LET ME GIVE YOU SOME EXAMPLES OF EXEMPTIONS WE HAVE ISSUED WITHIN THE DEPARTMENT:

THE FEDERAL AVIATION ADMINISTRATION HAS ISSUED EXEMPTIONS TO SMALL BUSINESSES TO ALLOW THEM TO PERFORM THEIR OWN PREVENTIVE MAINTENANCE ON THEIR AIRCRAFT, THEREBY REDUCING THEIR COSTS. THE NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION HAS ISSUED SEVERAL TEMPORARY EXEMPTIONS FROM FEDERAL MOTOR VEHICLE SAFETY STANDARDS FOR A SMALL BUSINESS MANUFACTURING REPRODUCTION CARS. IT WAS FOUND THAT REQUIRING STRICT COMPLIANCE WOULD CAUSE SUBSTANTIAL ECONOMIC HARDSHIP FOR THE COMPANY.

WE HAVE ALSO TRIED TO ENSURE THAT OUR REGULATIONS ARE WRITTEN AS PERFORMANCE RATHER THAN AS DESIGN STANDARDS. AT THE SAME TIME, WE RECOGNIZE THAT SMALL ENTITIES OFTEN WANT OUR HELP BECAUSE, FOR EXAMPLE, THEY MAY NOT HAVE THE EXPERTISE TO DETERMINE HOW TO BUILD A PARTICULAR ITEM. SO, WHEN IT IS APPROPRIATE, WE PROVIDE GUIDANCE OR ADVISORY INFORMATION TO THE PUBLIC ON ALTERNATE ACCEPTABLE WAYS TO COMPLY WITH OUR REGULATIONS. OFTEN DOT FIELD PERSONNEL DEAL DIRECTLY WITH SMALL ENTITIES, ADVISING THEM OF THE LEAST BURDENSOME WAYS TO COMPLY WITH OUR REGULATIONS.

ACTION SUBSEQUENT TO ISSUANCE OF REGULATION

ENFORCEMENT

AS I JUST INDICATED, AFTER A REGULATION IS ISSUED WE CAN TAKE OTHER STEPS TO MAKE IT EASIER FOR SMALL ENTITIES. EVEN WHEN ENFORCEMENT ACTION IS NECESSARY, IT CAN RESPOND TO THE SPECIAL PROBLEMS OF SMALL ENTITIES. WE CAN AND DO, FOR EXAMPLE, CONSIDER A PARTY'S SIZE AND ABILITY TO PAY WHEN A VIOLATION OCCURS. AND IF OUR ENFORCEMENT EXPERIENCE INDICATES THAT SMALL ENTITIES ARE HAVING DIFFICULTY COMPLYING, WE CAN MAKE APPROPRIATE REGULATORY CHANGES.

REGULATORY REVIEWS

OUR MOST IMPORTANT ACTIVITY AFTER WE HAVE ISSUED A REGULATION IS ITS SUBSEQUENT REVIEW. THIS IS ONE AREA WHERE I AM PARTICULARLY PROUD OF DOT'S EFFORTS. AS INDICATED IN THE AGENDA I GAVE YOU, THE DEPARTMENT IS CURRENTLY REVIEWING NUMEROUS REGULATIONS. MANY OF THESE ARE BEING REVIEWED UNDER THE REGULATORY FLEXIBILITY ACT OR DOT'S OWN PRIORITY REVIEW PROGRAM OR BOTH. OUR PRIORITY REVIEW PROGRAM WAS INITIATED LAST FEBRUARY, WHEN WE IDENTIFIED MORE THAN 40 COSTLY OR CONTROVERSIAL REGULATIONS WITHIN THE DEPARTMENT THAT NEEDED TO BE REVIEWED ON A PRIORITY BASIS. WE HAVE COMPLETED MANY OF THESE REVIEWS, AND HAVE RECOMMENDED OR MADE CHANGES TO EXISTING REGULATIONS -- STEPS THAT WILL RESULT IN SUBSTANTIAL SAVINGS FOR THE AFFECTED PARTIES, INCLUDING SMALL ENTITIES. SOME GOOD EXAMPLES OF THESE ARE THE FOLLOWING:

BASED ON A REVIEW OF THE RULE THAT REQUIRES DOT FINANCIAL ASSISTANCE RECIPIENTS TO ESTABLISH AFFIRMATIVE ACTION PLANS TO INCREASE THE USE OF MINORITY AND WOMEN-OWNED BUSINESSES, AN INTERIM AMENDMENT WAS ISSUED ON APRIL 27, 1981. IT ELIMINATED A [redacted] REQUIREMENT FROM THE RULE, WHICH MANY MEMBERS OF THE PUBLIC PERCEIVED AS THE MOST BURDENSOME PROVISION IN THE REGULATION. THE CONTINUING REVIEW IS AIMED, TO A GREAT EXTENT, AT REDUCING THE PAPERWORK BURDENS ASSOCIATED WITH THE CURRENT REGULATION, WHICH AFFECTS MANY SMALL ENTITIES.

AS A RESULT OF A REVIEW OF OUR RULE THAT REQUIRES ALL DOT-ASSISTED PROGRAMS TO BECOME ACCESSIBLE TO HANDICAPPED PERSONS, AN INTERIM AMENDMENT WAS ISSUED ON JULY 16, 1981. THIS AMENDMENT INCORPORTED A LOCAL OPTION

PROVISION INTO THE REGULATION, THEREBY SIGNIFICANTLY REDUCING THE BURDENS ON MANY TRANSIT OPERATORS INCLUDING SMALL ENTITIES. SAVINGS COULD AMOUNT TO BETWEEN $213 AND $273 MILLION PER YEAR.

AS A THIRD EXAMPLE, THE PRIORITY REVIEW OF THE COAST GUARD'S BURDENSOME DOCUMENTATION REGULATIONS HAS BEEN COMPLETED AND A NOTICE OF PROPOSED RULEMAKING IS BEING DEVELOPED. PRELIMINARY ESTIMATES INDICATE THAT A SUBSTANTIAL REDUCTION IN PAPERWORK REQUIREMENTS (NOW 300,000 PERSON-HOURS OF PAPERWORK PER YEAR) SHOULD RESULT FROM THE RULEMAKING (PERHAPS AS MUCH AS A ONE-THIRD TO TWO-THIRDS REDUCTION OF THE TOTAL PAPERWORK BURDEN).

BECAUSE OF OUR SUCCESS WITH THESE REVIEWS, AND TO KEEP UP OUR MOMENTUM, WE HAVE RECENTLY ASKED PERSONNEL IN EACH OF OUR OPERATING ADMINISTRATIONS AND THE OFFICE OF THE SECRETARY TO IDENTIFY OTHER ITEMS FOR OUR PRIORITY REVIEW.

PROBLEMS

DESPITE OUR SUCCESS IN COMPLYING WITH THE RFA, MR. CHAIRMAN, WE HAVE HAD TWO PROBLEMS THAT I BELIEVE WARRANT YOUR ATTENTION. THESE ARE RELATED TO DEFINITIONS IN THE ACT AND CERTIFICATIONS OF IMPACT, WHICH THE ACT REQUIRES.

CONCERNING THE DEFINITIONS USED IN THE ACT, YOU HAVE STATED, MR. CHAIRMAN, THAT THE SBA CRITERIA SHOULD BE ADEQUATE IN NEARLY EVERY SITUATION. ONLY IN "RARE CASES" SHOULD MORE STRINGENT CRITERIA BE NEEDED. OF THE THREE TERMS USED IN THE ACT TO DEFINE SMALL ENTITIES, WE HAVE HAD LITTLE

INVOLVEMENT WITH THE TERM "SMALL ORGANIZATION," AND WE HAVE HAD LITTLE DIFFICULTY WITH THE TERM "SMALL GOVERNMENTAL JURISDICTION" BECAUSE THE STATUTE DEFINES IT SO SPECIFICALLY. HOWEVER, THE DEFINITION OF THE TERM "SMALL BUSINESS" HAS CAUSED SOME CONFUSION. ALTHOUGH DOT IS USING THE ACT'S DEFINITION AND RELYING ON SBA'S REGULATORY CRITERIA FOR SMALL BUSINESSES, ONE OF OUR OPERATING ADMINISTRATIONS -- FRA -- HAS ALREADY PUT OUT A NOTICE REQUESTING PUBLIC COMMENT ON ITS OWN DEFINITION. AT LEAST THREE OTHER OPERATING ADMINISTRATIONS ARE CONSIDERING OR EXPECT THAT THEY MAY NEED THEIR OWN DEFINITIONS. A FOURTH MAY ALSO HAVE TO DEVELOP ITS OWN DEFINITION, ESPECIALLY WHEN IT GETS INVOLVED WITH BUSINESSES NOT COVERED BY THE CURRENT SBA REGULATIONS. WE WILL WORK CLOSELY WITH THE OFFICE OF ADVOCACY ON THIS MATTER AND WE SUGGEST THAT THIS SUBCOMMITTEE ALSO MIGHT WISH TO KEEP A CLOSE EYE ON IT.

OUR OTHER PROBLEM CONCERNS A LARGE CATEGORY OF REGULATIONS WITH WHICH DOT IS INVOLVED THAT WE DO NOT BELIEVE NEED THE CERTIFICATION ON IMPACT REQUIRED UNDER SECTION 605(b) OF THE ACT. THAT SECTION REQUIRES AGENCIES TO CERTIFY TO THE OFFICE OF ADVOCACY THAT REGULATIONS FOR WHICH A REGULATORY FLEXIBILITY ANALYSIS WILL NOT BE PREPARED WILL NOT HAVE A SIGNIFICANT ECONOMIC IMPACT ON A SUBSTANTIAL NUMBER OF SMALL ENTITIES. AS OUR AGENDA INDICATES, DOT ISSUES THOUSANDS OF WHAT WE CALL ROUTINE AND FREQUENT REGULATIONS. THESE INVOLVE SUCH THINGS AS COAST GUARD DRAWBRIDGE REGULATIONS AND FEDERAL AVIATION ADMINISTRATION (FAA) AIRSPACE ACTIONS. THE FAA, FOR EXAMPLE, MAY HAVE TO ISSUE A NEW REGULATION ON AN INSTRUMENT APPROACH TO A PARTICULAR AIRPORT BECAUSE TREES ON THE APPROACH PATH HAVE GROWN TALLER OR A BUILDING HAS BEEN ERECTED. THE COAST GUARD MAY HAVE TO ISSUE A CHANGE IN A DRAWBRIDGE REGULATION BECAUSE A BRIDGE HAS BROKEN. THE

OFFICE OF ADVOCACY AGREES WITH US ON THIS PARTICULAR MATTER. IF IT WOULD BE HELPFUL, WE WOULD BE GLAD TO ASSIST YOU IN DRAFTING APPROPRIATE LANGUAGE TO GIVE THE OFFICE OF ADVOCACY AUTHORITY TO EXEMPT APPROPRIATE CLASSES OF REGULATIONS FROM THE SECTION 605(b) REQUIREMENT.

CONCLUSION

IN CONCLUSION, MR CHAIRMAN, I NOT ONLY BELIEVE THAT THE DEPARTMENT OF TRANSPORATION IS IN FULL COMPLIANCE WITH THE REGULATORY FLEXIBILITY ACT, BUT THAT WE HAVE SUBSTANTIALLY EXCEEDED ITS REQUIREMENTS. I THANK YOU AND THE OTHER MEMBERS OF YOUR SUBCOMMITTEE FOR THIS OPPORTUNITY TO DISCUSS OUR ACTIVITY UNDER THE ACT. AT THIS TIME, MR. EISNER AND I ARE PREPARED TO ANSWER ANY QUESTIONS YOU MIGHT HAVE.

Mr. FOWLER. To begin with, I would like to highlight what we have been doing to implement the act.

I am pleased to be here to testify about the Regulatory Flexibility Act and how the Department of Transportation has implemented it. Neil Eisner, Assistant General Counsel for Regulation and Enforcement, is with me today. Mr. Eisner has the general responsibility for oversight of DOT's regulatory activity, including compliance with President Reagan's Executive Order 12291 on Federal Regulation. Further, as our regulatory flexibility officer, he is our liaison with the Small Business Administration's Office of Advocacy on matters related to the Regulatory Flexibility Act.

For many years, DOT has recognized the importance of gathering complete and accurate information while we are developing a regulation. This includes helping small entities voice their opinions—and be heard.

The agenda required by the act and order is one of the best tools we have developed for informing everyone, including small entities, about DOT's regulatory activity.

An extremely important and distinguishing characteristic of our agenda is that it identifies all DOT regulatory activity. It is not limited to those regulations that we believe are major (under Executive Order 12291) or that will require a regulatory flexibility analysis or a review.

There are other ways we keep the public informed. Besides publishing the agenda in the Federal Register, we mail it directly to numerous individuals, businesses, State and local governments, and organizations.

In addition, the agenda contains instructions telling people how to get on our mailing lists to receive future copies of it, as well as any particular regulatory document in which they are interested. Once people are on the lists, it isn't necessary to read the Federal Register to keep abreast of DOT's regulatory activity. You simply identify regulations you are interested in, follow the instructions, and you will receive copies of the regulatory documents.

We have made a special effort to alert small entities to our agenda. Before publishing our April 1981 agenda, for example, we worked with SBA's Office of Advocacy to develop a lengthy list of publications and organizations involved with small entities that might be interested in DOT's regulations. We also used several other departmental publications that are mailed directly to small entities to advertise the existence of the agenda mailing list. We added the new names we received to our existing list, and now mail the agenda to over 250 addresses, more than half of which we believe are small entities or organizations representing them.

I would also like to mention the steps we took with respect to our agenda and our regulatory reviews specifically to comply with the RFA.

First, in our April agenda, we began identifying all regulations within the Department that would require a regulatory flexibility analysis. Our RFA review plans were published, in accordance with the statutory deadline, on June 29 and June 30 of this year.

Our October agenda then incorporated these plans by adding to our review list the large number of regulations that would undergo review in accordance with the RFA.

We do a number of other things during the development of a regulation, that I believe are worth mentioning at this time because of the assistance they provide to small entities.

For example, the Department does a regulatory evaluation—an economic analysis—for all of its regulations. We don't confine ourselves to those that are major—and require a regulatory impact analysis—or those that have a significant impact on a substantial number of small entities—and require a regulatory flexibility analysis.

This regulatory evaluation is made publicly available. It enables everyone to review the economic data we have.

We have also tried to make things easier for people who use the Federal Register by publishing all DOT documents on either Monday or Thursday, unless there is an emergency. And we have attempted to extend the use of such things as advance notices of proposed rulemaking, to enable the public to give us general comments before we start working out the details of a proposed rule.

Recognizing that small entities frequently need more time than others to prepare their comments, we generally provide more time than required for comment periods on proposed regulations—at least 60 days for significant regulations, and generally 45 days for nonsignificant regulations.

In addition, it is the Department's general policy that:

> To the maximum extent possible, notice and an opportunity to comment on regulations should be provided to the public, even when not required by statute, if such action could reasonably be anticipated to result in the receipt of useful information.

We also try to use public hearings as often as possible on occasion. We try to provide expert assistance to the public. Finally, because we recognize that some small entities and individuals cannot attend hearings during normal business hours, we hold some of our hearings in the evenings.

I would like to mention our activity, with respect to one of the more important requirements of the RFA, the need to prepare a regulatory flexibility analysis.

We have prepared one initial and one final regulatory flexibility analysis at DOT. Both involved the issue of minimum standards of financial responsibility for motor carriers—required by section 30 of the Motor Carrier Act of 1980.

We have also considered the impact of our rulemakings on small entities, when that impact is less than significant or the number affected is less than substantial. Two recent National Highway Traffic Safety Administration rulemakings relating to automobile automatic occupant protection and bumper standards are illustrative. Although it was found that a regulatory flexibility analysis was not required by the RFA, the Department still evaluated the possible impact on small entities. The FAA has conducted similar evaluations.

DOT does have, however, some enabling statute limitations, which have a bearing on the RFA's implementation. Let me stress that one of the Department's primary functions is the development of safety regulations. In some instances, the safety statutes under which we operate limit our latitude to address the special problems of small entities.

We have, however, used different regulatory approaches that do not conflict with our statutory objectives and that minimize the economic impact our rules have on small entities. For example, the Federal Highway Administration relieves small trucking companies of certain inspection, reporting, and recordkeeping requirements.

Another good example of our efforts in this area is a notice the Federal Railroad Administration (FRA) published in the Federal Register last summer.

[The notice referred to above follows:]

FEDERAL RAILROAD ADMINISTRATION, 49 CFR CH. II [DOCKET No. RSSI-81-1; NOTICE No. 1]

GENERAL SAFETY INQUIRY; INITIATION AND ANNOUNCEMENT OF HEARINGS

Agency: Federal Railroad Administration (FRA), Department of Transportation (DOT).

Action: Notice of general railroad safety inquiry.

Summary: The FRA is initiating a general railroad safety inquiry to obtain information from the public to assist in evaluating and improving the effectiveness of its safety regulatory program as it applies to small railroads.

Dates: (1) The first 2-day public hearing will begin at 10 a.m. on September 22, 1981 (other hearings have been *tentatively* scheduled for October 15 and 16 and November 9 and 10, 1981). (2) Prepared statements and comments should be submitted to the principal program person by September 15, 1981. (3) Persons desiring to participate in the first hearing should notify the Docket Clerk by September 15, 1981.

Addresses: (1) September 22 hearing location—Nassif Building, Room 4234, 400 Seventh Street, S.W., Washington, D.C. 20590. (2) Docket Clerk, Office of Chief Counsel, FRA; Washington, D.C. 20590.

For further information contact: (1) *Principal Program Person:* Rolf Mowatt-Larssen, Office of Safety (RRS-20), FRA, Washington, D.C. 20590. Phone (202) 426-0924. (2) *Principal Attorney:* Lawrence I. Wagner, Office of Chief Counsel (RCC-30), FRA, Washington, D.C. 20590. Phone (202) 426-8836.

Supplementary information: Pursuant to § 211.61 of its rules of practice (49 CFR 211.61), the FRA is initiating a general safety inquiry to examine in depth the effectiveness of its safety regulatory program as it applies to small railroads. On the basis of the information obtained in this inquiry and other data, FRA will consider revising the scope and nature of its regulatory program to reflect particular circumstances encountered by small railroads in complying with FRA safety regulations.

Historically, Federal safety regulations have applied equally to all railroads regardless of size or the nature of their operations. Any need to vary the universal application of a given rule to accommodate the significant variations of corporate size and scope of operations has been resolved by the issuance of waivers or the granting of exemptions. In recent years the volume of the request for exemptions or waivers of compliance has been increasing.

In response to this situation and in light of the policies enunciated in Executive Order 12291 (46 FR 13193) and the Regulatory Flexibility Act (5 U.S.C. 610, Pub. L. 96-354), the FRA is considering possible courses of action that could accommodate the compliance problems encountered by small railroads.

The scope of the inquiry encompasses three general areas: (1) the definition of what constitutes a small railroad; (2) the accident experience of the small railroads; and (3) the appropriateness of eliminating small railroads from the coverage of specific FRA safety regulations or modifying FRA safety regulations to impose different standards for small railroads.

The definition of a small railroad has been addressed in several contexts. The Interstate Commerce Commission (ICC) has classified railroads according to their revenues and designated railroads with low annual revenues as Class III carriers for reporting and analysis purposes. For ICC purposes a railroad with revenues of less than 10 million dollars is currently considered a Class III or small railroad (49 CFR Part 1240). The Small Business Administration considers a rail transportation entity to be a small business for Federal loan purposes if the entity has annual gross revenues of $1.5 million or less (13 CFR Part 121). The FRA has used the concept of a railroad operating only one train at any given time as a benchmark for excluding such carriers from the applicability of a safety regulation (40 CFR Part

221). Finally, the Hours of Service Act (45 U.S.C. 64(b), 83 Stat. 463) uses the concept of a limited number of employees (15 persons) as the basis for permitting noncompliance with the general statutory limitation on the number of hours a railroad employee may remain on duty. FRA seeks information from all concerned parties on the appropriateness of using one or more of these or other benchmarks as a basis for defining a small railroad for the purposes of modifying or eliminating portions of FRA's safety regulations.

FRA has conducted a preliminary analysis of the accident experience of the small railroads. The accident/incident data furnished by all the railroads for the five year period, 1975 through 1979, was organized to permit a limited comparison of the accident experience of all railroads. The comparison data indicates that the small railroads account for a very small portion of the total number of persons killed or injured during that period. For example, if the ICC definition of a small railroads is used, approximately 340 railroads would fit within that definition. These railroads experienced roughly 10 percent of the total number of casualties for the five year period. In contrast, the Class I and Class II carriers accounted for approximately 7,100 fatalities and 290,000 injuries in that period which represents approximately 90 percent of the casualties reported to FRA. FRA believes that this favorable accident record of small railroads is the result of several factors, including the relatively slow speed of the operations, the low volume of hazardous materials being handled, and the fact that many of these railroads operate almost exclusively during daylight hours and have a degree of consistency in their limited operations that is not found on large railroads. FRA is concerned that simple reliance on these absolute numbers could be misleading since these small railroads have fewer potential casualties due to the limited size of their work force and the small volume of railroad activity.

FRA seeks to obtain the views of all parties on the need to create a risk exposure index to permit an assessment of actual casualty data in terms of the number of employee hours worked or the train miles operated FRA will also consider attempting to refine the injury data to permit an indexing of injury severity.

Finally, FRA has reviewed the implications of the exemption of small railroads from FRA safety regulations. There are currently fifteen substantive safety regulations that can have an impact on small railroads. These fifteen regulations, which are contained in Volume 49 of the Code of Federal Regulations, are as follows:

1. Part 213—Track Standards.
2. Part 215—Freight Car Standards.
3. Part 217—Railroad Operating Practices.
4. Part 218—Railroad Operation Rules.
5. Part 220—Radio Rules.
6. Part 221—Rear End Marking Device Rules.
7. Part 223—Glazing Standards.
8. Part 225—Accident/Incident Reporting Rules.
9. Part 228—Hours of Service.
10. Part 229—Locomotive Standards.
11. Part 230—Steam Locomotive Standards.
12. Part 231—Safety Appliance Standards.
13. Part 232—Power Brake Rules.
14. Part 235—Signal System Reports.
15. Part 236—Signal System Rules.

Some of these regulations are strictly related to matters that are fully within the control of a small railroad and have no bearing on other railroads. The Track Standards, Glazing Standards, and Accident/Incident Reporting Rule are illustrative of this type of regulation. Other regulations related to matters that are not necessarily within the exclusive control of the small railroads due to the interchange of equipment and the existence of joint operations of various types. The Freight Car Standards, Safety Appliance Standards and Power Brake Rules are illustrative of this type of regulation. FRA wants to obtain the views of various parties on the wisdom of modifying or eliminating both types of safety regulations for small railroads.

The FRA lacks necessary data on the costs and benefits associated with compliance by small railroads with its existing regulations. Such data is necessary for an assessment of the effectiveness of its safety regulatory program and any potential restructuring of that program to address the needs of the small railroads.

In order to obtain the necessary information, FRA believes that the following items should be addressed in these hearings and in written submissions by interested parties:

1. What criteria should be used to describe a small railroad? If the criteria selected involves annual revenues, number of employees, mileage operated or some other criteria that may fluctuate periodically, should FRA impose a reporting burden? Should a small railroad, which functions as an integral part of a large railroad, be accorded different regulatory treatment?

2. Should FRA measure the accident record of a small railroad before reducing or eliminating the regulatory burden for that carrier or simply permit all railroads meeting the criteria to fit with the deregulated category? If an accident record analysis is utilized, what reference tools should be utilized by FRA (i.e., the number of casualties and train accidents experienced for a given period or a combination of accident data and exposure index)? How should the existence of passenger or tourist operations, or the movement of quantities of hazardous materials, impact the evaluation of that accident record?

3. What are the actual costs of compliance with individual FRA safety regulations? Which of the existing regulations is considered the most burdensome rule for small railroads? Which regulations should be eliminated or modified? Would alteration of only portions of some regulations be sufficient to eliminate the most burdensome impact of that particular rule? Explain. If the regulatory burden were reduced for small railroads and the accident record of that railroad deteriorated, what would be recommended as a practical and enforceable response by FRA to that situation? How should FRA approach the status of a newly created railroad that has no accident record?

4. Would a reduction in the Federal regulatory burden lead to an increase in State regulatory efforts? Would a reduction in the Federal regulatory burden on small railroads present a safety problem in the equipment area for large railroads that connect with those small railroads?

5. In the absence of Federal standards for the condition of track and equipment, what standards would small railroads utilize to determine the minimum safe condition of track or equipment? Is there any industry mechanism for determining compliance with these alternate standards?

FRA requests that the Association of American Railroads, the American Short Line Railroad Association, individual railroads, the National Transportation Safety Board, state regulatory agencies, railroad employee organizations and other interested parties participate actively in this hearing by providing knowledgeable witnesses and pertinent technical, manufacturing, service and cost data. FRA further requests that these witnesses be prepared to present detailed information to justify their positions.

Prepared statements should be submitted by September 15, 1981, in triplicate to the Docket Clerk, Office of Chief Counsel (RCD–1), Federal Railroad Administration, 400 Seventh Street, S.W., Washington, D.C. 20590.

Persons desiring to participate in this hearing should notify the principal program person by September 15, 1981 and indicate the amount of time they will need to present their views.

Two additional hearings are planned. These are tentatively scheduled to occur on October 15 and 16 in St. Louis, Missouri and on November 9 and 10 in San Francisco, California. The locations for these hearings will be announced later.

(Sec. 266, Federal Railroad Safety Act of 1970 (45 U.S.C. 437), § 1.49(n) of the Regulations of the Office of the Secretary, 49 CFR 1.49(n))

Issued in Washington, D.C. on July 27, 1981.

ROBERT W. BLANCHETTE,
Administrator.

Mr. FOWLER. I'd like to read a part of it to you to illustrate how we are responding to the kinds of concerns the Regulatory Flexibility Act addresses. FRA's analysis of accident data indicated, "That the small railroads account for a very small portion of the total number of persons killed or injured during" the period of the study.

The agency stated that it:

> Believes that this favorable accident record of small railroads is the result of several factors, including the relatively slow speed of the operations, the low volume of hazardous materials being handled, and the fact that many of these railroads operate almost exclusively during daylight hours, and have a degree of consistency in their limited operations, that is not found on large railroads.

The agency asked for advice and comment from the public on whether a specific category could be created for these small railroads, and whether they should be treated differently under FRA's safety regulations.

Another important way in which we deal with small entities involves our action after regulations are issued. In appropriate and unique circumstances, we can grant exemptions from existing regulations. When safety is a concern, the exemption can take into account the size of the affected party and exempt it from the specific requirements of the regulation, or the exemption can require the party to act in a specified manner that provides an equivalent level of safety but makes compliance easier for small entities. Let me give you some examples of exemptions we have issued within the Department.

The Federal Aviation Administration has issued exemptions to small businesses to allow them to perform their own preventive maintenance on their aircraft, thereby reducing their costs. The National Highway Traffic Safety Administration has issued several temporary exemptions from Federal motor vehicle safety standards for a small business manufacturing reproduction cars. It was found that requiring strict compliance would cause substantial economic hardship for the company.

We have also tried to insure that our regulations are written as performance rather than as design standards. At the same time, we recognize that small entities often want our help because, for example, they may not have the expertise to determine how to build a particular item. So, when it is appropriate, we provide guidance or advisory information to the public on alternate acceptable ways to comply with our regulations. Often DOT field personnel deal directly with small entities, advising them of the least burdensome ways to comply with our regulations.

After a regulation is issued we can take other steps to make it easier for small entities. Even when enforcement action is necessary, it can respond to the special problems of small entities. We can and do, for example, consider a party's size and ability to pay when a violation occurs.

Our most important activity, after we have issued a regulation, is its subsequent review. This is one area where I am particularly proud of DOT's efforts.

As indicated in the agenda I gave you, the Department is currently reviewing numerous regulations. Many of these are being reviewed under the Regulatory Flexibility Act, or DOT's own priority review program, or both.

Our priority review program was initiated last February, when we identified more than 40 costly or controversial regulations within the Department that needed to be reviewed on a priority basis.

We have completed many of these reviews, and have recommended, or made changes to existing regulations—steps that will result in substantial savings for the affected parties, including small entities.

For example, based on a review of the rule that requires DOT financial assistance recipients to establish affirmative action plans to increase the use of minority- and women-owned businesses, an interim amendment was issued on April 27, 1981. It eliminated a conclusive presumption from the rule, which many members of the public perceived as the most burdensome provision in the regulation. The continuing review is aimed, to a great extent, at reducing the paperwork burdens associated with the current regulation, which affects many small entities.

Because of our success with these reviews, and to keep up our momentum, we have recently asked personnel in each of our operating administrations, and in the Office of the Secretary to identify a list of other items for another series of priority reviews.

Despite our success in complying with the RFA, Mr. Chairman, we have had two problems that I believe warrant your attention. The definition of the term "small business" has caused some confusion. Although DOT is using the act's definition and relying on SBA's regulatory criteria for small businesses, one of our operating administrations—FRA—has already put out a notice requesting public comment on its own definition. Three or four other operating administrations are also considering their own definitions. We will work closely with the Office of Advocacy on this matter and we suggest that this subcommittee also might wish to keep a close eye on it.

Our other problem concerns a large category of regulations with which DOT is invovled that we do not believe need the certification on impact required under section 605(b) of the act.

DOT issues thousands of what we call routine and frequent regulations. These involve such things as Coast Guard drawbridge regulations and Federal Aviation Administration [FAA] airspace actions. The Office of Advocacy agrees with us on this particular matter. If it would be helpful, we would be glad to assist you in drafting appropriate language to give the Office of Advocacy authority to exempt appropriate classes of regulations from the section 605(b) requirement.

In conclusion, Mr. Chairman, I not only believe that the Department of Transportation is in full compliance with the Regulatory Flexibility Act, but that we have substantially exceeded its requirements. I thank you and the other members of your subcommittee for this opportunity to discuss our activity under the act. At this time, Mr. Eisner and I are prepared to answer any questions you might have.

Mr. IRELAND. Thank you, Mr. Fowler. I guess I would like to begin by noting what I consider an enlightened approach that you have taken at the agency. When you took on the night meetings and everything else, someone in your agency has some idea of what the market is we are trying to serve.

Mr. Weber?

Mr. WEBER of Ohio. I thought your testimony, Mr. Fowler, was extremely interesting, especially the example that you gave about the request for a proposed rule removal, or creating a new classification of small railroads.

What has the response been, and how many comments have you had?

Mr. FOWLER. Until the comment periods are over—Mr. Eisner is closer to it, and I would like to turn the question to him.

Mr. **Eisner**. I am not thoroughly familiar with the comments. They did list them on here, I believe.

Mr. **Weber** of Ohio. It is a notice that the hearing was scheduled for September 22.

Mr. **Eisner**. Yes. I am not familiar with what the comments are on the railroad rules. This is a difficult area.

They are asking for assistance, not in the definition only, but also in deciding whether they should be treated differently.

Mr. **Weber** of Ohio. That is the September 22 hearing, which would have been held here in Washington, and there is a tentative hearing scheduled for October 15 and 16. Do you know if those hearings were held?

Mr. **Eisner**. No, I don't.

Mr. **Weber** of Ohio. Would they have been held here in Washington?

Mr. **Eisner**. That I don't know again.

Mr. **Fowler**. It should be noted that in September, in particular, there was another organization, a small railroad——

Mr. **Weber** of Ohio. I was going to ask just that question. We have a small railroad in Toledo, a three-man operation, that certainly should qualify as a small railroad. It would be very burdensome and costly for them to comment or hire counsel.

Mr. **Fowler**. The American Shortline Operation is a long- and well-established organization, which is quite effective in getting the point of smaller railroads across, especially to the Railroad Administration.

Mr. **Weber** of Ohio. Thank you very much.

Mr. **Ireland**. Thank you, Mr. Fowler.

Mr. Fowler, considering together a list of those material you are talking about, can you describe what kind of burden this has been to your agency, if it has been a burden at all? Have they been able to just work it in?

Mr. **Fowler**. Well, I don't think it is a burden to the agency, to any large degree. We have a very good administration, with particular emphasis on the burden of regulations in general. And so the Regulatory Flexibility Act oversight and will not cause any additional burden in this thing.

We are in the process of determining whether we have an appropriate number of people in the category of jobs that would review these regulations, to make sure that we are getting them done on a timely basis, because I think that the burden on the public for not having sufficiently assigned people and dollars focused on this problem, thereby causing delay in the changing of regulations, is probably a greater burden than it is on the agency in particular.

Mr. **Ireland**. A comment or two, or perhaps an elaboration on the problem of definitions that you referred to? Have you spoken with Advocacy?

Mr. **Fowler**. I think that since Mr. Eisner has most of the contact with that office, and the Office of Advocacy, I will let him respond.

Mr. **Eisner**. Thank you, John.

Mr. Chairman, the problem that we have been having is that the SBA definitions that exist right now do not cover all of the entities that we might deal with.

The agencies in the Department want the flexibility to write their own definitions, when it is appropriate, but they do not want to write it in too many instances. They feel SBA has the expertise.

And when we started off in January, most of them thought that they can live with the existing definition. They all want to have total control with cases where the definitions don't apply.

Mr. **Ireland**. But tell me what has transpired along that line. Are you and the SBA able to get together on it, or——

Mr. **Eisner**. We have talked to the SBA, and we understand that they have an awful lot of comments, and in the near future, they will probably issue another rulemaking document. And we are very happy about the fact that they are going to try, in this rulemaking document to reflect the Reg. Flex. Act, which was written just before the SBA's A.N.P.R.M. came out, so we are happy about that. And we would like to see it as quickly as possible.

Mr. **Fowler**. It will give us some standardization in the process in those areas. That an ad hoc determination of each small business size obviously can't be quite as well spirited as you might like it to be, and I think the SBA is probably better able to do that than we are, in each and every circumstance.

Mr. **Ireland**. We appreciate your comments on technical regulations and your problems with them. I would point out that, to my general knowledge, and you can get a lot more specifics, both the FCC and the EPA face some similar problems, and some work has already been done there that you might well profit by.

Mr. **Fowler**. We certainly will.

Mr. **Ireland**. Some of what is the responsibility of the act is handled through your local offices. Can you comment on whether that works, or doesn't work?

Mr. **Fowler**. We have had some complaint from the SBA's Office of Advocacy as to not getting the word out rapidly enough to our regional offices. DOT is, itself, a unique agency. I mean, in comparison, for instance, to the Department of Health and Human Services, which has many many more dollars to distribute to a lot more people.

We have almost 12 or 13 times the number of people involved in our administration. And as a result, with 120,000 people, there is a communication problem that is not quite as prompt as we want.

Many of those people are in Alaska, and that is not around the corner. But we are making every effort, I think, to improve our communications, to get the word out so that our regional people are following the guidelines which we establish, and the procedures that we think are helping us get the best input from national businesses and individuals.

Mr. **Ireland**. Mr. Weber, do you have anything else?

Mr. **Weber** of Ohio. No; I don't.

Mr. **Ireland**. OK. Thank you.

Mr. **Fowler**. Thank you, Mr. Chairman.

Mr. **Ireland**. We are going to recess the hearing to go and vote. We will be right back.

[Whereupon, at 10:20, a recess was taken.]

Mr. **Ireland**. We are back and our witness is Mr. Joseph P. Hile from the Food and Drug Administration.

Mr. Hile, welcome.

TESTIMONY OF JOSEPH P. HILE, ASSOCIATE COMMISSIONER FOR REGULATORY AFFAIRS, FOOD AND DRUG ADMINISTRATION, PUBLIC HEALTH SERVICE, DEPARTMENT OF HEALTH AND HUMAN SERVICES; ACCOMPANIED BY LINDA R. HORTON, DEPUTY CHIEF COUNSEL FOR REGULATIONS AND HEARINGS, AND GERALD BARKDOLL, ASSOCIATE COMMISSIONER FOR PLANNING AND EVALUATION, DHHS

Mr. HILE. Good morning, Mr. Chairman. I would like to introduce, first, my colleagues at the table. On my left, is Deputy Chief Counsel for the Regulations and Hearings, Linda R. Horton, and on my right is Associate Commissioner for Planning and Evaluation, Gerald Barkdoll.

My statement is not exceptionally long, Mr. Chairman. I can present it in its entirety, or give you an abbreviated version, whichever.

Mr. IRELAND. Why not summarize it, if you would, if it is convenient for you?

Mr. HILE. Yes. I think we can still make the points that we would like to.

We are pleased to have this opportunity to discuss the Food and Drug Administration's implementation of the Regulatory Flexibility Act.

Today, FDA faces an important challenge. This challenge is to continue to protect the public, but to do so in a way that does not stifle industrial creativity or economic growth.

Even as regulatory problems and decisions increase in complexity, changed social and economic conditions demand renewed emphasis on rationality, flexibility, and impact analysis.

FDA is responding to this challenge by increasing its commitment to make regulations less burdensome, and to write them clearly so that those in the regulated industries know exactly what is expected of them.

FDA published its first semiannual agenda under the new directives of the Regulatory Flexibility Act and the President's Executive Order 12291 on April 30, 1981. The agenda listed 33 regulations, recommendations, and guidelines that the agency was developing, either as new initiatives or as improvements of existing regulations.

The latter included comprehensive revisions of our NDA regulations and our regulations for medicated feeds. We are currently working on our October agenda, which will be published around the first of next month.

As you know, the Regulatory Flexibility Act also requires agencies to notify the Chief Counsel for Advocacy of the Small Business Administration and small businesses or their representatives of each regulatory flexibility agenda, and invite comments on the regulations listed on the agenda.

To accomplish the latter requirement, FDA sends copies of the agenda to approximately 125 trade associations, which represent a broad range of companies, whose membership is primarily small businesses. Also, individual bureaus of the agency have sent notices on the availability of the agenda to their constituencies.

Our press office sends an announcement about the agenda's availability to a special mailing list of trade press that is targeted specifically to small businesses. In addition, the agenda itself was handed out at relevant conferences around the country where small businesses were in attendance.

The process of developing a regulatory flexibility analysis begins with FDA's annual planning process. At that time, each candidate regulation in the plan is screened for the likelihood of appreciable economic effects.

If a regulation is suspected to have an appreciable economic effect, it is required to have a preliminary analysis we call a threshold assessment. This analysis estimates the regulation's cost impact, so that we can determine if the regulation is a major rule under Executive Order 12291, or if a proposed regulation will have a significant impact on a substantial number of small entities under the Regulatory Flexibility Act.

If the threshold in either the Executive order of the act is exceeded, we proceed with the appropriate analysis—a regulatory impact analysis, a regulatory flexibility analysis, or both.

If both thresholds are exceeded, we will try to satisfy all requirements in a single analysis. If neither threshold is exceeded, the threshold assessment provides the basis for explaining why in the preamble to the regulation.

The concept of an initial screening analysis is not new. We have used it for several years to satisfy the requirements of predecessors to Executive Order 12291. We believe it will work equally well for the regulatory flexibility requirements, although it has not yet been rigorously tested.

Thus far in 1981, FDA has devoted most of its rulemaking effort to completion of rulemaking begun before January 1, 1981—the effective date of the economic analysis provisions of the Regulatory Flexibility Act.

To date, FDA has proposed 12 new regulations in 1981, and none of these, in our judgment, have had appreciable economic effects. Most involve very minor technical changes, several which relax existing requirements.

FDA strongly supports the concept of a periodic review of rules, as called for in the act and the Executive order. And, in planning this review, FDA considered three factors:

First, both the act and the Executive order imply that the most unnecessary burdens should be reviewed first; second, the Agency's capacity to conduct economic analyses is very limited; and third, some analyses are inherently more difficult than others, because of limited data or nonquantifiable factors.

These considerations led FDA to conclude that the establishment of optimal priorities for the 10-year review cycle was the most important initial step.

Further, the agency decided not to rely solely on the subjective judgments within FDA about review priorities. Therefore, the agency's plan, published in the Federal Register on July 14, 1981, announced a process for public participation in establishing FDA review priorities.

The agency expects that public comment will focus immediate review attention on a comparatively few regulations that are most in need of revision. We expect public comment to yield a fairly precise list of priorities for the first 2 or 3 years of review activity, but a much less definite list for subsequent years.

We may find that recurring calls for public input every 2 or 3 years will prove to be the most effective way to keep our review priorities focused on the most important items.

In addition to our efforts to implement the Regulatory Flexibility Act, we have initiated a series of far reaching programs intended to improve the relationship between FDA and the small business community.

As I discuss in our prepared statement, we know that a large proportion of the total industries affected by our regulations continues to be relatively small firms.

Because of this fact, FDA has developed a specialized small business assistance program with a twofold purpose: First, to lessen the impact of FDA regulations on small business, and second, to assist small businesses in attaining compliance.

As part of this program, we have established an agency small business coordinator in the Office of the Commissioner, and small business contact persons in each bureau.

We have established small business service desks at several of our regional offices.

We have supported the growth and development of our Office of Small Manufacturer's assistance in the Bureau of Medical Devices; and, we have held legislative style hearings during rulemaking to assure that small businesses have an opportunity to present their views directly to FDA representatives.

Mr. Chairman, as you know, regulatory programs are important to the safety and health of the Nation; their goals, however, should be achieved in ways that minimize the burden on small businesses. I believe that this philosophy is at the heart of FDA's small business program.

This concludes my statement. Mr. Chairman, we will be pleased to answer your questions and others which you may have.

Mr. **Ireland**. Thank you, Mr. Hile.

In your testimony, there was a comment concerning the small amount of incremental efforts that you endure in putting this act into operation. That reflects on what you were doing beforehand, and that you do have an awful lot of small firms under your wing. In fact, 55 percent of your firms have 10 or less employees. Do you feel that you have a unique situation along this line?

Mr. **Hile**. We are not certain that we do, Mr. Chairman. We really have not had an opportunity to think that kind of thing through. On the other hand, there are several agencies that we cooperate with regularly, OSHA, EPA, segments of USDA, that have either regulatory responsibility over the same kind of firms we do, or similar ones. So I suspect their experience is not dissimilar from ours.

Mr. **Ireland**. You alluded to the comment of some limited capacity to conduct these Commission analyses in some detail, and I wondered if you had consulted with SBA on that line.

Mr. **Hile**. There is no question, Mr. Chairman, that their assistance is always welcomed and helpful to us. I can't answer directly whether we have used their data base or not. I would like to have Mr. Barkdoll discuss that a little bit.

Mr. **Ireland**. That would be fine.

Mr. **Barkdoll**. I believe we have not used their particular data base. We have found that there are two kinds of data bases that are useful. The first is a generalized data base, such as the one produced by the census of manufacturers, or other commercially available sources. We will check on the SBA one. I suspect theirs is the same sort of data base. These generalized data bases are very useful to get a macro look at an industry; for example, to determine what percentage of an industry is small and large.

However, when are dealing with a particular regulation, we have found even the best of the generalized data bases is not very helpful. Therefore, we must ask the industry itself and find other sources to obtain the detailed information we need.

We have tried two approaches. One is trade associations. Frankly, that hasn't been as successful as we had hoped. They just don't seem to have the capacity for collecting data and sharing it. Maybe they will in the future.

The most successful source of information we have found is direct contacts with industry itself; simply calling them directly. I don't know of one turn down. People want to share and talk to us, and we are frankly finding that is the best way to get useful information.

Mr. **Ireland**. What about the capacity to do that? I take it from your testimony that given the availability of data, you feel that there is some problem about utilizing and making the analysis. Am I incorrect in interrupting the remarks?

Mr. **Barkdoll**. Today it is a problem, and I have made a couple of attempts to urge the trade associations to get into the business of collecting and sharing data.

I thought it would be to our mutual benefit. I was at one time a controller of a corporation, and I know some data is very highly protected. Sometimes, you don't even share it with people inside your own company.

But we are attempting to find a mechanism. We have been able to use some contractors. We have, for instance, a contract with A. D. Little, and they are interviewing 27 different companies. What we hope to learn is how new medical device products get invented, developed, and marketed. We want to make sure that we don't stifle innovation as we write regulations for this new and growing industry.

By having a contractor be the primary contact with the firms, a third of which are small, we are able to protect the identity of firms. They are willing to share data, and we are obtaining some useful information. From this we can begin developing, collecting, and getting data to do Reg. Flex. analyses, and the analyses required by the Executive order.

Mr. **Ireland**. There is so much information already available in this Government. Yet each agency is so hung up on its own operation, that they think they are the only ones that can do anything, and they don't check with anybody else.

We have a great capacity in the executive field. There is just a mass of information out there, but each agency wants to do their own thing, just like they are the only people who can invent the wheel.

I am struck by that, and so I think is the general public. We are frustrated with our Government, because they have produced all this information and nobody shares it.

Putting on your past controller's hat, is that true in your agency or not?

Mr. **Barkdoll**. I don't know if it is so much that the Government is asking for information that they don't use, or that the person they are asking doesn't understand how it is going to be used. In some cases, if, I think, it is explained what the uses would be, how it would be shared with other people inside the government.

Obviously, when FDA calls a firm about a particular regulation, we, and the firm, know exactly why we are collecting the information and why we are interested in how they do business because we are looking at a specific regulation. Perhaps that's why there is 100-percent participation when we make phone calls.

Mr. **Ireland**. You mentioned the Bureau of Medical Devices Office. Just exactly what does that do in relationship to the small businessman?

Mr. **Barkdoll**. Well, the Bureau of Medical Devices is one of our bureaus, and is responsible for the regulation of medical devices. They have a small business staff and I think Mr. Hile can explain the operation of that staff.

Mr. **Hile**. It is a staff of about 10 persons. The 1976 medical device amendments specifically direct the Agency to establish this staff and we were not displeased. It was not a problem for us to establish the staff, but it is mandated by the amendments.

The staff has several primary purposes. One is to convey to small businesses what the requirements of the act are, and what our regulation requirements are, to interact with the small business community; to determine what their concerns are; and what their needs are; how they can be best reflected in our regulations and in our programs, and to support and conduct educational activities for small businessmen in the diverse areas.

The focus of that individual staff is entirely on the medical device industry, because of its being mandated by the amendments. However, after we began to gain experience with the mechanism of interacting with small businesses, the agency decided on its own initiative to establish some small business desks in several of our regional offices and the individuals that man those desks interact with small businesses in all of the program areas that are subject to FDA regulation.

In a sense, we built on that concept and that initiative to expand it to include assistance to food, drug, cosmetic, and medicated feed establishments.

Mr. **Ireland**. In other words, you found that the system works?

Mr. **Hile**. Yes; it certainly does. I don't want to belabor it, Mr. Chairman, but you wondered how well it worked, well we conducted a study of the effectiveness of the desks, because we wanted to make some determination as to whether or not additional desks should be established.

We feel that the desks have been quite successful, and this was demonstrated by our study. I would be happy to submit a copy of that study for the subcommittee's review, if you'd like to have it.

Mr. **Ireland**. Please do.

Mr. Weber.

Mr. **Weber** of Ohio. Thank you.

Mr. Hile, how many staff persons are assigned to the responsibility of seeing to it that your Agency complies with the Reg. Flex. Act?

Mr. **Hile**. Well, I really can't give you the exact number. And the reason I answer it in that fashion is that we have taken steps to make the requirements of the Reg. Flex. Act a part of all of our regulation development processes, and each of the bureaus has staff that are regularly involved in the development of regulations, and we have given them guidance and continued to assist them in making certain, as they begin to develop regulation concepts, they take into consideration the requirement of the Reg. Flex. Act.

Then, as those regulations pass through the review process within the agency, members of my own staff, members of Mr. Barkdoll's staff and of our General Counsel's staff have an opportunity to evaluate the bureau's work. So that by the time a regulation reaches the final stages of preparation, just prior to publication, a very extensive review and consideration of the regulatory flexibility requirement should be imposed on any one of the regulation projects that we have ongoing. At least this is the theory behind our process as we begin to become better at this whole effort.

Mr. **Weber** of Ohio. But you have one person who is in charge of compliance with that?

Mr. **Hile**. Yes; that would be myself. I am in charge of managing the Agency regulation development process. I am assisted by our small business coordinator, and that individual has a number of responsibilities, all directed to small business, but including day-in and day-out communications with SBA.

And I have a staff in my own office that has responsibility for interacting on a regular basis with trade associations, so I have others to assist me in that.

Mr. **Weber** of Ohio. Is somebody doing this all on a full time basis? Is that Mr. Barkdoll or are you full time in Reg. Flex.?

Mr. **Barkdoll**. I would say approximately a third of the staff is devoted to Reg. Flex. It is very difficult to estimate precisely since we have integrated the Executive order and the Reg. Flex. Act.

Mr. **Weber** of Ohio. It seems like everybody is administering the act.

Mr. **Barkdoll**. Well, several people are involved in doing what is expected. Probably two-thirds of the staff is involved in the regulatory assistance.

Mr. **Hile**. I would say, if one individual had to be fingered within the Agency as either having the Agency comply or not comply, it would be myself.

Mr. **Weber** of Ohio. What is the definition of small that you use?

Mr. **Hile**. Let me ask Mr. Barkdoll to explain that, and give you some of our experiences in that regard.

Mr. **Barkdoll**. We have avoided spending very much time arguing about what small is. We learned from our previous experience with Executive orders when we found so much time was devoted to trying to determine what major was. People were arguing about whether the impact was 100 million or 10 million in some cases.

We simply start out with the assumption that every regulation will affect small companies. We know that of the companies we regulate, 90 to 95 percent are small by one definition, and 55 percent are small by a very conservative definition. We simply know that we have to spend a lot of time on it. We simply don't spend a lot of time arguing whether small is 5 people, 25 people, 100 people, or whatever.

We know we have to put emphasis on this, any time a regulation is developed.

Mr. **Hile**. Let me give an example of what it means to us. There are probably between 4,500 and 5,000 firms which are registered drug firms under the requirement of the Food, Drug, and Cosmetic Act, but of those 4,500 to 5,000, we figure about 95 percent of the drugs on the marketplace today are made by 90 of the firms. And as a consequence, you have what's left of those, between 4,400 or above, that are literally in the business of manufacturing drugs and are, by our own logic, small businesses.

Therefore, when it is our responsibility to think through how we can best develop a regulation to assure that all of those drugs meet basic safety requirements, and we have to look at ways in which we can achieve relief where it is appropriate to achieve relief, the effort is not always directed specifically at small firms when we develop the regulation.

However, we know intuitively that it will result in relief to small firms. To just pursue that a minute longer, we have a proposal now on the books that although we have not finalized it, we have announced publicly that we will act under its requirements. That proposal relieves certain drug manufactures from the requirements of parts of the good manufacturing practice regulations. The manufacturers that are exempt from these requirements are those that process such drugs as mineral oil, or some other very simple drug entity. The firms that repackage and label mineral oil and such products, and distribute them, do not have to adhere to the full range of the good manufacturing practice regulations that the firm that is manufacturing a very potent prescription drug needs to adhere to.

And then we can also predict the impact of our regulations by the nature of the business itself. For example, the small businesses, for the most part, that are bottling mineral oil, and that type of thing, benefit a great deal for even though we extend the exemption to all the drug industry, its effect is to assist small business, because of the nature of the business.

Mr. **Weber** of Ohio. Thank you very much.

Mr. **Ireland**. Something that's important to this committee is regulation on the food labeling. Can you give us a rundown on whether there are any changes coming up on that?

Mr. **Hile**. Yes. The subcommittee may be aware that after the White House Conference on Food, Nutrition, and Health submitted its report early in the 1970's, late 1960's, FDA took a number of labeling initiatives. Then about 2½ to 3 years ago, we decided that we ought to step back a minute and look to see what we had accomplished, and whether or not there should be some change in the direction we were going, and we held a number of public meetings as a consequence of that. And about 13 months ago, we published a notice that reflected the findings of the Agency and the other agencies that were participating with us, in that effort at the time.

Since then, and in light of the Regulatory Flexibility Act, and other new requirements, we have decided to step back from the initiatives announced in that notice and reassess the whole food labeling initiative. It is under review now.

There have been no final decisions except that generally where there are some labeling initiatives where we believe there can be some real public health benefit, otherwise we will not undertake any new labeling initiatives until we have announced what our policy will be. The only initiative that's fallen outside of this is our sodium labeling initiative. That has received quite a bit of attention in recent weeks. And if the subcommittee would like to have some additional information about that, we can provide you with some of the changes that have been made in that regard. That's the only initiative we currently have underway.

Mr. **Ireland**. I appreciate that. That is helpful background information. When Mr. Swain testified, he had a comment that was of concern to us, and I will read it for the record, and I am anxious for your comments:

> Out of the approximately 20 proposals, on which the Regulatory Flexibility Act applied, FDA certified 16. Over half of these certifications were just barely adequate, because the accompanying statement of reasons were conclusory, or because beneficial impacts were not sufficiently measured or explained.
>
> These analytical problems were repeatedly addressed to the FDA regulatory flexibility officer. FDA has persisted in using this type of certification, and the Office of Advocacy has clearly informed the FDA that the Office of Advocacy is concerned with the amount of information obtained by the Agency analyses.

And it goes on a little bit further; that is the text of it, and your comment will be welcomed along that line.

Mr. **Hile**. Mr. Chairman, we read that testimony, as you know, and in all candor, we were surprised. We know we have had some differences of opinion, however, our relationship has been informal, and we really have not had the kind of formal critique that would have led us to believe that they had as much concern about our activities as they apparently do.

Clearly, it is important now, and we will do this, that we take the initiative to meet with the Advocate and members of his staff and make certain that we reach an understanding of what they expect of us.

On the other hand, there may be some difference of opinion that will have to be discussed. We feel very strongly that, to the extent that we make a good-faith effort to determine whether or not there will be an impact on small businesses as a result of issuing one of our regulations, if we conclude that there will not, we are reluctant to use the resources we have to pursue that extensively and develop further justification, if we can in turn use those same resources to review our existing regulations, and perhaps undertake a full analysis on one of them if such is required.

I think perhaps there is a need to understand with the SBA Advocacy what their definitions are, what they expect from us, and what they feel we must do to fulfill the requirements of the act.

I don't know, Jake, if you want to add anything to that or not.

Mr. **Barkdoll.** I have read that before, and it occurred to me, when one reads it, there were analytical problems that they described. I have not focused on the word analytical before, but I think maybe that's true.

The one regulation that we have discussed with them is a regulation that permits industry to use alternative ways to manufacture or produce some blood products. The product is a serum that is used for typing blood, to determine if it is A, B, or whatever. We thought it was clear that, since this would allow small and large businesses to decide among a wider variety of manufacturers' processes, that it was clearly beneficial and a deregulation effort. The regulation itself was about one page long, and our reg. flex. executive order analyses were about 20 percent of that.

There are only 11 firms in this business, and we received requests from a number of them to make this change. So we worked it out with them and made the change.

We made the decision that it was the right thing to do and was beneficial to industry. We took our analytical resources and used them where we have larger arguments and real concerns. However, we need to work with them a little bit on some of these disputed items.

Mr. **Ireland.** Let me say this for the record, agencies have been doing what I would call making in house conclusions as to what happens to small business.

They say, "we are going to do this because we know it is longer heeded." That's why, in the act, we are requiring analyses regardless, and why certifications ought to be few, because we find that the wisdom that most of the agencies think that they have, is not in the real world. They should go out and have an analysis done. They might find that there is an even more beneficial thing that can be done.

So, from my point of view, I think that is the real thrust of this act. We said, "Agencies, you haven't got all the wisdom in the world, and don't feel badly that you don't. Let's get out there, even when you think you are doing something fantastic, and look at it for a while."

I think I have belabored that point long enough. Do you have any other questions, Mr. Weber?

Mr. **Weber** of Ohio. No; I don't have anything further.

Mr. **Ireland.** The chief of staff, Mr. Lynch, has a question.

Mr. **Lynch.** Mr. Hile, the subcommittee has heard from the retail druggists, and they are somewhat concerned about the proposed regulation called the patient package insert regulations. We would like to know the status of those regulations, and also whether they are covered by the Reg. Flex. Act.

Mr. **Hile.** The regulations are not covered by the Regulatory Flexibility Act, in that the regulations that establishes the procedures by which patient package inserts could be developed and made available as part of drug labeling were finalized in September of 1980 and as a result of rulemaking activity that had preceded that.

On the other hand, the agency and the Department are aware of how controversal that regulation is, and as a consequence, the Secretary and the Commissioner have stayed that regulation. The Commissioner has it under active review and is committed to make a recommendation to the Secretary within a month as to what he believes an appropriate course of action would be.

So, I think that within the not too far distant future, the decision of the agency and the Secretary will be known to the subcommittee and to the industry generally.

It is a major concern to us. It is probably one of the regulations that received more analyses than any of our other regulations, and there are widely varying opinions on the value of the regulation. We have recently held a public hearing to help us focus even more on what the issues are, and what the alternatives are as they should be analyzed and resolved too.

Mr. **Lynch**. Is that the public opinion, or is it also shared by the agency?

Mr. **Hile**. I suspect there is a difference of opinion at the agency. I would be surprised, on any issues, that there would not be. The Commissioner is certainly the kind of person who is committed to listening to all of the arguments for any one solution to this matter. But once having done that, he will also then make his decision and recommend that to the Secretary.

I have no sense, in all honesty, as to what that decision will be, because I think he wants to have the opportunity to review completely the results of the hearing, and we left the hearing docket open for 15 days, and that's just recently closed. I know he has not had a chance to make a decision on that.

Mr. **Lynch**. Thank you.

Mr. **Ireland**. If there are no other questions, we thank you for your excellent testimony.

Mr. **Hile**. Thank you very much for having us here, Mr. Chairman.

Mr. **Ireland**. It was very informative, and we appreciate that.

[Material requested during testimony follows:]

federal register

Tuesday
November 10, 1981

Part II

Department of Health and Human Services

Semi-Annual Agenda of Regulations

DEPARTMENT OF HEALTH AND HUMAN SERVICES SEMIANNUAL REGULATIONS AGENDA AND REVIEW LIST—Continued

Food and Drug Administration

The Department is considering some significant Food and Drug Administration proposed and final regulations in addition to those listed below. Included among them are those regulations which are listed in the April 30, 1981 semi-annual agenda and which have not yet been published. The need for these regulations is being further reviewed in light of the Secretary's reservation for himself of authority to publish certain FDA regulations. That reservation was published in the **Federal Register** on May 11, 1981.

Title	Summary	Contact
New Drug Approval Process; Revision of IND/NDA Regulations.	A. *Description:* Under section 3(a)(3) of E.O. 12291, FDA is reviewing and will propose to revise the existing regulations for investigational new drugs (IND's) and new drug applications (NDA's) to improve the efficiency of FDA's operation and to update and refine its internal policies in reviewing, processing, and communicating with sponsors and applicants on IND's and NDA's. B. *Why Significant:* These revisions are intended to improve the approval process and the accompanying dialogue between FDA and sponsors of IND's and NDA's. The improvements will benefit consumers through earlier availability of new drugs. C. *Regulatory Impact Analysis:* Yes. D. *Need:* Experience with these regulations after a number of years and comments by members of Congress, regulated industries, consumer groups, and the general public have identified areas where the IND and NDA procedures and requirements need updating and improving. E. *Legal Basis:* 21 U.S.C. 355, 357, 371(a). F. *Chronology:* The proposed NDA and IND regulations are expected out of agency and to the Department Nov. 1981 and May 1982 respectively. G. *Regulatory Flexibility Analysis Required:* Yes.	IND Regulations: Steven Unger, General Regulations Branch (HFD-30), Bureau of Drugs, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-5300. NDA Regulations: Michael McGrane, General Regulations Branch (HFD-30), Bureau of Drugs, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-5200.
Patient Package Inserts for Prescription Drug Products (21 CFR Part 208).	A. *Description:* FDA is reviewing this existing regulation that requires manufacturers of designated prescription drug products to prepare and distribute labeling that is intended for the patient. The regulation requires the dispenser of the product to provide the labeling to the patient when the product is dispensed. B. *Why Significant:* As originally promulgated the regulation was intended to help patients use prescription drugs more safely and effectively. C. *Regulatory Analysis:* Yes. D. *Need:* Patients may not pay attention to, understand, or remember important prescription drug information presented orally to them by their physicians. E. *Legal Basis:* 21 U.S.C. 352, 353, 355, 357, 371; 42 U.S.C. 262. F. *Chronology:* In the FEDERAL REGISTER of April 28, 1981 (46 FR 23739 and 23815), FDA stayed the effective dates of its patient package insert program to permit further review of questions that continue to be raised about the actual costs and benefits of the program and to review the rulemaking with respect to Executive Order 12291. On September 30, 1981 and October 1, 1981 FDA held public meetings to receive information and views from interested persons. The period for submitting written comments closed on October 15, 1981. Comments and other information are being evaluated. G. *Regulatory Flexibility Analysis Required:* To be determined.	Michael McGrane, General Regulations Branch (HFD-30), Bureau of Drugs, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-5200.
Health Planning and Resources Development (42 CFR Parts 121, 122, 123, and 124).	A. [illegible] themselves been costly and appear to have restrained competition within the health care industry. Extensive justification is required for expansion of facilities and services, or changes in acquisition of new equipment. These regulations will be reviewed and ways explored to make them more cost-effective, pending legislative action to terminate the program. B. *Why Significant:* Existing health planning regulations are being reviewed and areas identified where substantive changes can be made to relieve the Federal regulatory burden. Highest priority will be given to those revisions with major deregulatory impact which are consistent with both the limited continuation of the health planning program and its eventual phase-out. These revisions will also incorporate changes needed to implement provisions in the Health Planning and Resources Development Amendments of 1979 (Pub. L. 96-79), the Health Programs Extension Act of 1980 (Pub. L. 96-538), and the Omnibus Budget Reconciliation Act of 1981 (Pub. L. 97-35). C. *Regulatory Analysis:* Not required. D. *Need:* To relieve the Federal regulatory burden on health planning agencies and health care providers and to implement the provisions of Pub. L. 96-79, Pub. L. 96-538, and Pub. L. 97-35. E. *Legal Authority:* Public Health Service Act, as amended (41 U.S.C. 300k-1, 42 U.S.C. 216, 41 U.S.C. 300l-4, 300l-5, 42 U.S.C. 300-e-1, 300-t). F. *Chronology:* None. G. *Regulatory Flexibility Analysis Required:* No.	[illegible] Director, Policy Coordination Staff, Bureau of Health Planning, Health Resources Administration, 3700 East-West Hgwy., Hyattsville, MD 20782 (301) 436-6870; FTS 436-6870.
Reasonable Volume of Uncompensated Services to Persons Unable to Pay (42 CFR Part 124, Subpart F).	A. *Description:* Existing regulations at 42 CFR Part 124, Subpart F, establish specific requirements that recipients of Federal assistance under Title VI or Title XVI of the Public Health Service Act must meet to assure that they will make available, in the facility or portion of the facility constructed, modernized or converted with that assistance, a reasonable volume of services to persons unable to pay for services. B. *Why Significant:* These existing regulations are being reviewed to determine which policies could be revised to increase flexibility in monitoring and enforcement, and in determining levels of uncompensated services to persons unable to pay. C. *Regulatory Analysis:* Yes. D. *Need:* To provide greater flexibility in determining compliance with assurance of reasonable volume of uncompensated services to persons unable to pay. E. *Legal Authority:* Public Health Service Act, Sections 215 (42 U.S.C. 216), 1625 (42 U.S.C. 300s-4), 1602(6) (42 U.S.C.), and 1627 (42 U.S.C. 300s-6). F. *Chronology:* Existing regulations (42 CFR Part 124, Subpart F) published in the Federal Register of May 18, 1979 (44 FR 29372). G. *Regulatory Flexibility Analysis Required:* Yes.	Florence B. Fiori, Director, Bureau of Health Facilities, Health Resources Administration, 3700 East-West Hgwy., Hyattsville, MD 20782, (301) 436-7700.

EVALUATION OF THE FDA SMALL BUSINESS SERVICE DESK PROGRAM

October 1980

Prepared by
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Evaluation Staff
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Food and Drug Administration

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EXECUTIVE SUMMARY

After one year of operation, the pilot Small Business Service Desk (SBSD) Program was examined to assess the volume and nature of FDA interaction with small business, the extent to which small manufacturers perceive they benefit from the program, and the most efficient methods of providing this assistance. The findings of that evaluation are presented in this report.

- The Small Business Service Desk Program is intended to:

  1. facilitate access of small business to the Agency;
  2. provide an efficient mechanism for small business to obtain information from the Agency;
  3. provide guidance on general problems confronting small business; and
  4. reduce the complexities faced by small business in dealing with a large bureaucracy.

For the pilot program, four local contacts or Small Business Representatives (SBR) were established. Two of the SBR's are specialists and devote their effort exclusively toward medical device firms in their regions while the other two SBRs are generalists and serve all FDA-regulated business in their region.

Evaluation of the Pilot Program entailed three components:

1. analysis of monthly activity reports submitted to EDRO by each SBR;
2. a series of surveys of small business persons;
3. interviews with the four SBRs operating the program.

VOLUME OF ACTIVITY ANALYSIS

The volume of activity by the SBRs can be measured by the number of telephone contacts, on-site visits, and workshops/conferences.

Examination of Table A-Summary of Activity (Page 13) indicates that the volume of telephone inquiries at each desk has increased. The number of on-site visits has increased significantly throughout the year with expansion into food processing firms, drug manufacturers, and medicated feed mills, as well as the more frequent participants--medical device plants. Moreover, the SBRs are participating in an increasing number of seminars, and are conducting more FDA-sponsored workshops.

Most of these activities have been slightly higher at the Medical Device Specialist Desks. Additionally, a significant portion (23%) of generalist interactions have been with medical device firms.

Detailed breakdowns of these figures also show that "Interpretation/Explanation" of FDA regulation and procedures continues to be the most frequently cited nature of telephone discussion (40%). Of the various categories of telephone inquiry, this one represents the most significant information interchange--immediately providing knowledge required by members of FDA's regulated industries.

SURVEY RESULTS

Three separate telephone surveys were conducted by OPE to learn the extent to which small manufacturers perceive they benefited from the SBSD Program in terms of their better understanding of FDA regulations and their improved capabilities to comply.

Survey of firms who participated in an on-site visit

Fourteen firms were randomly selected from a list of sixty-six SBR on-site visits conducted through third quarter FY 80. The large majority of respondents (11 of 14) felt that the information provided to them significantly enhanced their ability to understand and comply with FDA regulations. A smaller segment (2 of remaining 3) felt that their ability to understand and comply with FDA regulations had been at least moderately enhanced. All respondents agreed that the SBR was extremely responsive to their concerns and that they would like to see the SBSD program continued.

Survey of firms who had telephone contacts with an SBR

Twenty-eight telephone surveys were conducted with firms who had telephone contacts with the SBRs. Seven firms from each of the four SBR regions were randomly selected from the telephone contact reports completed by each SBR.

The results of the survey were unanimously positive. The large majority of small businesses (21 of 28) felt that the information provided by the SBRs significantly increased their understanding of and ability to comply with FDA rules and regulations while the remainder felt that their understanding of and ability to comply with FDA rules and regulations had been moderately increased. Almost all of the respondents (23 of 28) found the SBRs to be extremely responsive in providing answers and mailing information. Every firm contacted wanted the SBSD Program to be continued. No significant differences were apparent in the responses from firms utilizing the two generalist desks and those utilizing the two specialist desks.

Once again the respondents complimented the program. However, the compliments were somewhat more moderate than those received during the survey of firms receiving on-site visits.

Survey of firms who had no contact with an SBR

Twenty-eight registered small business firms who had never utilized the SBS desk were telephoned for the purpose of learning why the service had not been used. Seven firms from each pilot region were randomly selected. Eighteen of the 28 firms were unaware of the SBS Desks' existence. Of the remaining ten, seven had not had questions or problems relating to FDA regulations; two had questions but preferred to deal with the Bureau of Medical Devices; and one person had not had the time to contact the SBR yet. With the exception of the two firms who dealt directly with the Bureau, the other eight representatives stated that they would contact the SBS Desk if questions or problems arose.

In conducting the random selection discussed above calls were made to eight firms who had utilized the SBS desk. All of these firms were medical device firms. From analysis of activity data and survey findings, it is apparent that the SBS Desks have received more extensive publicity within the medical device industry than the other regulated industries. Explanations are twofold: (1) The medical device industry, as a result of its relatively new regulatory status is probably more inquistive of FDA requirements and communication channels and (2) the Bureau of Medical Devices, specifically the Office of Small Manufacturers Assistance (OSMA), is conducting concurrent activities.

CONCLUSIONS AND RECOMMENDATIONS

Interviews with each SBR and with the EDRO Small Business Coordinator, as well as conversations with small business persons who had utilized the program have contributed to our analysis of the program and resultant conclusions and recommendations which follow:

- Interaction with the bureaus

  All four SBRs reported no significant problems in dealing with headquarters.

- Reporting

The current reporting system is functioning to the general satisfaction of OPE, EDRO, the bureaus, and the SBRs with the exception of tardiness. Some improvement in timely reporting could be expected, however, with additional clerical support.

- Secretary/Clerical Support

Currently, not all of the SBRs have a full-time clerical assistant as was originally planned. Three of the four rely on part of one of the regional/ district office secretaries. Current workload appears to justify added support.

We recommend assignment of full time clerical support.

- Training

Prior to implementation of the pilot program each SBR underwent a two week training session at the various Bureaus. With the exception of one SBR, who was a former CSO, the SBRs have not received training in the interpersonal contact skills required of their position; i.e., reaching out to the public, conducting workshops, public relations, etc.

Additional, on-going training dealing with general technological knowledge relevant to the industries for which the SBR is responsible, (e.g., the field training courses) and those skills necessary for dealing with the general public would enhance the SBR's effectiveness.

- Facilities

For the most part, less than adequate facilities have been made available to the SBRs. Some business persons prefer face-to-face discussions as opposed to telephone conversations. This was one of the precepts of the local SBR aproach. Existing facilities vary greatly.

We recommend that each service desk be provided with facilities appropriate for conducting a confidential interview with a guest of the Agency. These basically include a private room with guest chair and reasonable comfort.

- On-Site Visits--Definition

During this non-regulatory visit, the SBR reviews and analyzes problems of particular concern to that firm. The specific activities of the SBR during an on-site visit have been loosely defined to allow flexibility and thereby provide individualized assistance to the participating firm.

In practice, reported on-sites have varied from thorough examinations of a manufacturer's plant operations and recordkeeping practices (e.g., a seven-hour mock GMP inspection and how to fix it) to a brief discussion with the manager in his/her office. Flexibility remains an unqualified goal, but a tighter definition of on-site activities is needed to provide reasonable bounds.

- On-Site Visits--Enforcement Problems

During the developmental stages of this program, there was much concern about the effect of on-site visits upon compliance activities.

Through June 1980, 84 on-sites have been conducted. No significant compliance problems have been reported as a result of these visits. All four SBRs report that firms participating in on-sites have appeared to understand fully their advisory capacity and that the on-site visit does not convey any waiver of reponsibility to the firm nor impart any immunity to the firm for violations which may occur, even when recommendations of the SBR are implemented.

- Supervision of SBRs

The four SBRs in the pilot program have all been attached to the Office of the Regional Food and Drug Director (RFDD). Three of the SBRs report directly to the RFDD while the fourth reports to a subordinate of the RFDD. The SBRs are in somewhat of an awkward position in that they need to have high level support, they benefit from supervision and guidance that is close at hand, and yet to effectively interact with the small business community, they need to be separate from the enforcement activities of the region. Additionally, the SBRs need personnel management guidance to assist them in improving their job and in monitoring their performance.

There is a concern that program continuity will be impaired when an RFDD decides to transfer, detail, or otherwide divert the SBR from the SBSD program. It is important that the SBRs remain continuously available to work as SBRs, interacting with the small business community and not pulled off to work on "crunch" situations in the region on a temporary or permanent basis.

The current approach is to have the SBRs assigned as specific functions out of the RFDD's office, supervised as are other main positions in the immediate office (such as Regional Radiological Health Representatives, Regional Veterinary Medical Officer, etc.). The SBSD program needs a commitment from the RFDDs for extended, dedicated staffing to insure program continuity. The small business coordinator in EDRO can provide overall program support and guidance to the SBSD program and to the SBRs.

- Methods of Soliciting Business

Mass mailing is a widely utilized means of solicitation among the Small Business Service Desks.

The survey of 14 small businesses having participated in on-sites and 28 small businesses having had telephone contacts with an SBR also provided information as to how these firms first learned of the Small Business Sevice Desk. Only three small business respondents contacted the SBR after receiving information in the mail. These results suggest that stronger emphasis should be placed on more personal marketing strategies and less emphasis should be placed on mass mail contacts.

- Area of Coverage

The four pilot desks (each covering a region) appear suited to the current demand for assistance in each pilot region and should accomodate activity anticipated in the short-term future.

- Generalist vs. Specialist Approach

The two pilot Medical Device Specialist Desks have experienced a larger volume of program activities than have the generalists. Much of this increased contact, however, may be attributed to the efforts of the Bureau of Medical Devices. Also, the SBRs report that the "dynamic tension" between industry and the regulator appears to have not yet afflicted the majority of the device industry.

The Generalists have a much more loosely controlled and diverse universe to work with. Furthermore, their industries have been under regulatory scrutiny for a longer time and the "dynamic tension" is more pervasive, exuding anxiety at the prospect of any contact with FDA personnel.

If the SBSD Program is expanded to all regions, that expansion will provide the opportunity to consider three alternative approaches:

a. All Generalists. With one in each region, this approach would require ten SBRs.

b. All Specialists. With one for each FDA program in each region, this approach would entail 60 SBRs.

c. Some combination of Generalists and Specialists.

The third alternative would provide the unique advantages of a Specialist for those industries where it is found to be most effective and utilize the Generalist approach where it is found to be most effective and/or efficient.

The pilot program has adequately demonstrated the effectiveness of the two Medical Device Specialist Desks. We believe, however, that the results of the pilot cannot necessarily be expected to apply in other industries.

More testing of this concept, considering other specialty areas, is needed before a fully valid assessment is made of the value of generalist versus specialist.

We recommend:

- The Medical Device Specialist be continued in Regions II and IX.
- Other FDA programs be pilot tested with the Specialist approach in a distribution complementing geographic concentrations of industries.
- The Generalist be expanded to other regions as resources are available.

If and when a decision is made to expand the SBSD Program to all 10 regions, we feel that a mixture of specialist and generalist desks be considered and that the first year of such an expansion be treated as a second stage pilot.

Based on industry concentrations informally obtained from EDRO, one format for an expanded Program might be as follows:

Regions II and IX	Continue Medical Device Specialists (2)
Regions IV and V	Continue Generalists (2)
Region I	Establish Food Specialist (1)
Region III	Establish Drug Specialist (1)
Region VI	Establish Radiological Health Specialist (1)
Region VII	Establish Veterinary Medicine Specialist (1)
Regions VIII and X	Establish Generalists (2)

Each region would then have one SBR—minimum coverage for a full scale SBSD Program. An evaluation of such an expansion of the program should be conducted after one year. At that time, conversion of Specialists to Generalists or vice versa could be readily accomplished. Further expansion could also be accomplished at that time, if appropriate.

- Effectiveness

  The service rendered by the SBRs can enable a broad segment of the regulated industry, composed largely of people unable to retain a permanent regulatory staff, to become informed about FDA policy. Through the SBR service, these firms have a direct tie with their regulatory agency and this should increase their ability to maintain or improve compliance. Additionally, the program should better enable the Agency to be responsive to small business needs.

Measurable aspects of the benefits of the pilot program to the small businesspersons have been identified as: (1) volume of calls received: (2) number of workshops attended and conducted; (3) number of on-sites performed; and (4) survey of participants' opinions.

The major anticpated benefit to FDA was improved compliance in the small business arena. FDA policy has been based on the theory that voluntary compliance can be achieved through increased knowledge of regulatory requirements.

This study's surveys demonstrate overwhelmingly that small business persons participating to date perceive an increased knowledge of FDA regulatory requirements.

Through examination of all of the information sources cited above, it appears that the objectives of the Small Business Service Desk Program are being attained.

- Summary

Evaluation of the one year pilot SBSD Program has shown that the four desks are basically meeting the program objectives, that there is a high degree of interaction with the small business community, that the small business community perceives the desks to be helpful to them, and that they believe it is a program that should be continued. Expansion of the program is a decision that has to be made from a consideration of Agency resources and competing priorities. The evaluation does, however, support a continuation of the program because it is working well and being received well. There are improvements to be made, but clearly we would recommend continuation.

INTRODUCTION

A. PURPOSE OF THIS REPORT

With the initiation of the Small Business Service Desk (SBSD) Program, the Deputy Commissioner requested that the Office of Planning and Evaluation design and conduct a formal evaluation. He specifically requested that the study: measure the kind and quality of assistance rendered; the recipients' view of such assistance; and the actual impact of the assistance on compliance with FDA regulations.

After approximately four months of operation, the program was examined to assess the volume and nature of FDA interaction with business during the program start-up. A status report was presented in February 1980.

A Phase II study was conducted over the next eight months making use of a year's experience to perform a more intensive evaluation of the quality and effectiveness of assistance rendered. This report presents the findings of that evaluation. Of prime concern is the extent to which small manufacturers perceive they benefit from the program in terms of their improved capabilities to comply with FDA regulations. This latter study also confronts questions as to the most efficient methods of providing this assistance, i.e., generalists vs. specialists; headquarters/field interaction, etc.

B. PROGRAM OBJECTIVES

Historically, FDA has always responded to inquiries relating to its regulatory requirements. Formal efforts to provide education and assistance to industry are, however, receiving increased attention.

The recently initiated Small Business Service Desk Program represents one facet of FDA's current policy to seek out those who might have a greater need for assistance.

This new program began in September 1979 as a pilot intended to:

1. facilitate access of small business to the Agency;
2. provide an efficient mechanism for small business to obtain information from the Agency;
3. provide guidance on general problems confronting small business; and
4. reduce the complexities faced by small business in dealing with a large geographically dispersed bureaucratic organization.

C. APPROACH

For the pilot program, four local contacts or Small Business Representatives (SBR) were established. These desks are located in: Newark, New Jersey (Region II); Atlanta, Georgia (Region IV); Chicago, Illinois (Region V); and Santa Ana, California (Region IX). The SBRs stationed in Newark and Santa Ana devote their time exclusively to medical device firms in their regions; the Atlanta and Chicago SBRs serve all FDA-regulated businesses in their regions.

D. ONGOING FUNCTIONS

The functions of a small business service desk are summarily defined as:

1. Respond to industry requests relative to FDA regulations and interpretations of those requirements.
2. Make on-site visits to small manufacturers to conduct non-regulatory inspections and informally appraise the firm's compliance with FDA's requirements.
3. Expeditiously respond to industry requests for forms and publications.
4. Make presentations regarding regulated products at meetings and conferences attended by small businesses within the region.
5. Advise headquarters as to needed information programs.

E. EVALUATION METHODOLOGY

Evaluation of the Pilot Small Business Service Desk Program entailed three components:

1. Analysis of monthly activity reports submitted to EDRO by each SBR. The objective here was to determine the volume and nature of activity taking place, as well as any developing trends.

2. Interviews with the four Small Business Representatives operating the pilot program. The first hand experiences of the individuals directly involved in implementing the program were considered a critical element in determining the program's successes, problem areas, etc.

3. A series of surveys of small business persons. Firms which had made use of SBSD services were randomly selected to determine their degree of satisfaction with the program's performance. Firms were also randomly selected from registration files to establish a sample of companies NOT using the service in an effort to determine why.

Information from these three sources was combined with the evaluators' observations of the program's operation during the pilot. From these sources we drew study conclusions and proposed recommendations.

PROGRAM EVALUATION

A. VOLUME OF ACTIVITY ANALYSIS

The volume of activity handled by the SBS Desks can be measured by the number of telephone contacts, on-site visits, and workshops/conferences. Following the narratives describing each type of activity are two summary tables. Table A-Summary of Activity depicts the volume of activity, by type, for each desk. Table B-Summary of Activity-Generalists vs. Specialists compares the volume of activity, by type, for the generalists and specialists.

1. Telephone Contacts

During the first five months of operation (August - December 1979), the volume of telephone inquiries at each desk consistently increased. This steady increase in unsolicited telephone contacts was noted in the February 1980 status report. During the next six months the trend became erratic, but was definitely upward. This can best be demonstrated by examination of the average number of telephone contacts handled per month by each desk.

2. On-Site Visits

The number of on-site visits has increased significantly throughout the year -- 84 have been conducted in all. More recently, the generalists have begun on-sites on food processing firms, drug manufacturers, and medicated feed mills, as well as medical device plants.

TABLE A

SUMMARY OF ACTIVITY
ALL DESKS

A. Telephone Contacts

	Monthly Average Aug. -Dec. 1979	Monthly Average Jan. -June 1980	Total Contacts Aug. 1979 - June 1980
Newark	13.6	53.2	387
Chicago	19.4	38.0	325
Santa Ana	25.2	79.8	604
Atlanta	17.6	70.5	511
TOTAL			1,827

B. On-site Visits

	Total Aug. -Dec. 1979	Jan.	Feb.	Mar.	Apr.	May	June	Total Jan. - June 1980
Newark	4	5	3	8	3	2	2	23
Chicago	0	0	0	0	0	1	2	3
Santa Ana	12	4	7	5	3	3	10	32
Atlanta	0	0	0	1	1	1	7	10
	16	9	10	14	7	7	21	68

C. Workshops/Conferences

	Total Aug. -Dec. 1979	Jan.	Feb.	Mar.	Apr.	May	June	Total Jan. - June 1980
Newark	7	0	0	0	2	0	0	2
Chicago	10	1	1	2	4	5	1	14
Santa Ana	9	2	2	2	0	2	1	9
Atlanta	10	2	2	1	2	3	1	11
	36	5	5	5	8	10	3	36

TABLE B

SUMMARY OF ACTIVITY
GENERALISTS VS. SPECIALISTS

1. Telephone Contacts

	Jan.	Feb.	Mar.	Apr.	May	June	Totals
Generalists	38	79	83	114	180	157	651
Specialists	131	104	121	123	176	145	800

2. On-Site Visits

	Jan.	Feb.	Mar.	Apr.	May	June	Totals
Generalists	0	0	1	1	2	9	13
Specialists	9	10	13	6	5	12	55

3. Workshop/Conferences

	Jan.	Feb.	Mar.	Apr.	May	June	Totals
Generalists	3	3	3	6	8	2	25
Specialists	2	2	2	2	2	1	11

3. Workshops

The SBRs have participated in industry trade association sponsored seminars, announcing their availability to lend assistance and discussing general compliance problems. They have also conducted FDA-sponsored workshops. The specialist SBRs have cooperated with OSMA in conducting several "mini-conferences" with about a dozen small device manufacturers at a time. The generalist SBRs are offering medical device workshops as well as the Warehouse Sanitation Workshop which was developed for the Atlanta Region by the Bureau of Foods' Industry Programs Branch. The volume of workshops conducted or attended by SBRs (36 in first quarter FY 80) was compromised somewhat by budget restrictions causing the cancellation of some workshops originally scheduled for the second quarter FY 80. Notwithstanding these encumbrances, the SBRs participated in 36 additional workshops January through June 1980.

4. Generalists vs. Specialist Activity

With the exception of attendance at workshops, activity has been slightly higher at the Medical Device specialist desks. Additionally, a significant portion (23%) of generalist interactions have been with medical device firms. (January-June 1980, Atlanta 58 of 423 telephone contracts (14%); Chicago 90 of 228 contacts (39%). The higher rate of participation by medical device firms is displayed with the complete subject area breakdown in Appendix A and will be discussed later.

5. Nature of Discussion

A review of activity figures (Appendix A) shows that "Interpretation/Explanation" of FDA regulations and procedures continues to be the most frequently cited nature of telephone discussion. Of the various categories of telephone inquiry this one represents the most significant information interchange--immediately providing knowledge required by members of FDA's regulated industries. From the businessperson's perspective, "interpretation/explanation" via local telephone typifies the most efficient mechanism for small business to obtain information from the Agency. The complexities faced by small business in dealing with a large bureaucratic organization are thereby substantially reduced.

B. SURVEY RESULTS

Three separate telephone surveys were conducted to learn the extent to which small manufacturers perceive they benefited from the SBSD program in terms of their better understanding of FDA regulations and their improved capabilities to comply. The first survey involved 14 medical device firm representatives who had received on-site visits by an SBR. The second survey entailed interviewing 28 small business firm representatives who had telephone contacts with an SBR. The third survey located 28 small business firms, who never had contact with an SBR to determine the reason for the lack of contact.

1. Survey of Firms who participated in an on-site visit

Fourteen firms were randomly selected from a list of sixty-six SBR on-site visits conducted through third quarter FY 80. The respondents were all from medical device firms because most on-site visits were in fact conducted by the SBR medical device specialists (81%).

Responses to the survey clearly demonstrate the value which the small businesspersons place on the Small Business Service Desk Program (Table C). The large majority of respondents felt that the information provided to them significantly enhanced their ability to understand and comply with FDA regulations. A smaller segment felt that their ability to understand and comply with FDA regulations had been at least moderately enhanced.

The one set of "no, not at all" responses to questions 1 and 2 must be further explained. The respondent felt that the SBR was not helpful in clarifying FDA rules and increasing the company's ability to comply with FDA regulations because "the SBR's interpretations and suggestions were not guaranteed to hold up during a later inspection/investigation."

All respondents agreed that the SBR was extremely responsive to their concerns and that they would like to see the SBS Desk Program continued.

In addition to answering the standard questions, the large majority of respondents expressed their strong interest in and support of the program.

A sampling of the comments is as follows:

> "The SBR should be promoted and receive a salary increase."
>
> "The SBR Program is the best thing that the government has ever done."
>
> "I cannot express how helpful the service has been."

Upon analyzing the responses of the small businesses, it is necessary to take two factors into consideration which may account for some of the expressed enthusiasm for the program.

(1) Federal regulation of medical devices is relatively new. Therefore, industry views the SBR as a valuable source of assistance.

(2) The sample is to some extent biased. These firms having requested on-sites, have demonstrated their trust in the SBR program and belief that the visit would be a beneficial and informative investment of their time.

TABLE C

ON-SITE SURVEY TOTALS

Do you feel that the information provided you by the SBR served to clarify FDA rules and regulations; and explain registration and reporting requirements?

No, not at all	Yes, to a moderate degree	Yes, significantly
(1)	(2)	(11)

Do you feel your ability to comply with FDA regulations has been enhanced by your contacts with the SBR?

No, not at all	Yes, to a moderate degree	Yes, significantly
(1)	(3)	(9)

Did you find the SBR responsive in dealing with your regulatory problems without delay or misunderstanding?

Some answers took too long, were unclear, imprecise, or incomplete	Yes, reasonably responsive	Yes, accurate and timely answers/ solutions were most often provided.
(0)	(0)	(14)

Was the on-site visit of the SBR a worthwhile investment of your time?

No, cost exceeded benefits	Yes, to a moderate degree	Yes, significantly
(0)	(1)	(13)

Would you like to see the Small Business Service Desk Program continued.

No	Don't Care	Yes
(0)	(0)	(14)

Firm Size:

Number of employees:	less than 10	7
	10 to 100	7
	101 to 500	
	over 500	

2. Survey of Firms Who Had Telephone Contacts With an SBR

Twenty-eight telephone surveys were conducted with firm representatives who had telephone contacts with the SBRs. Seven firms from each of the four SBR regions were randomly selected from the telephone contact reports completed by each SBR.

The results of the survey were unanimously postitive (Table D). The large majority of small businesses felt that the information provided by the SBRs significantly increased their understanding of and ability to comply with FDA rules and regulations while the remainder felt that their understanding of and ability to comply with FDA rules and regulations had been moderately increased. Almost all of the respondents found the SBRs to be extremely responsive in providing answers and mailing information. Every firm representative contacted wanted the Small Business Desk Program to be continued. No significant differences were apparent in the responses from firms utilizing the two generalist desks and those utilizing the specialist desks.

Once again the respondents gave glowing compliments regarding the SBRs themselves, as well as the program. However, the compliments were somewhat more moderate than those received during the survey of firms receving on-site visits. The universe from which this survey was selected is also acknowledged as somewhat biased in that all had already displayed an entrustment to the SBR program by making the telephone call. The level of satisfaction with the firm's experience is more positive as the level of commitment is greater, i.e., respondents who had on-sites (high commitment) were laudatory. The respondents who had telephone contacts (lower commitment) were only complimentary.

TABLE D

TELEPHONE CONTACTS SURVEY TOTALS

Do you feel that the information provided you by the SBR served to clarify FDA rules and regulations; and explain registration and reporting requirements?

No, not at all	Yes, to a moderate degree	Yes, significantly
(0)	(6)	(21) *

Do you feel your ability to comply with FDA regulations has been enhanced by your contacts with the SBR?

No, not at all	Yes, to a moderate degree	Yes, significantly
(0)	(9)	(17) *

Did you find the SBR responsive in dealing with your regulatory problems without delay or misunderstanding?

Some answers took too long, were unclear, imprecise, or incomplete	Yes, reasonably responsive	Yes, accurate and timely answers/ solutions were most often provided.
(0)	(5)	(23)

Would you like to see the Small Business Service Desk Program continued,

No	Don't Care	Yes
(0)		(28)

Firm Size:

Number of employees:	Less than 10	14
	10 to 100	8
	101 to 500	6
	over 500	

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* Remaining respondent(s) considered question to be inapplicable.

3. Survey of Firms Who Had No Contact With an SBR

Twenty-eight registered small business firms who had never utilized the SBS Desk were telephoned for the purpose of learning why the service had not been used. Seven firms from each pilot region were randomly selected. The medical device firms for the specialist desks were selected from the List of Registered Medical Device Establishments while the Official Establishment Inventory (OEI) was the source of firm selection for the two generalist desks. Since there is no existing list of registered firms who had not been in contact with an SBR, a portion of the firms selected from these two sources had utilized the SBD. When this situation occured, the firm was querried, but the next firm on the list was contacted as well to produce a sample of 28 non-users.

The results of the telephone survey are illustrated in Table E. Ten of the 28 non-user firms were aware of the SBS Desks' existence but had not utilized the service. Of these, seven had not had questions or problems relating to FDA regulations; two had questions but preferred to deal with the Bureau of Medical Devices; and one person had not yet had the time to contact the SBR. With the exception of the two firms who dealt directly with the Bureau, the other eight representatives stated that they would contact the SBS Desk if questions or problems arose.

Surveyed firms who were not aware of the SBS Desk at the time of contact (18), all expressed strong interest in the program and planned to contact the SBR at a future date.

The random selection method discussed above produced eight telephone calls to firms who had utilized the SBS Desk. All of these firms were medical device firms, and the distribution among the four regions was as follows.

Desk	Number of Firms
Newark	1
Santa Ana	1
Atlanta	3
Chicago	3

Upon analyzing the data from both tables, it is apparent that the SBS Desk has received more extensive publicity within the medical device industry than other regulated industries. Explanations are twofold: (1) The medical device industry, as a result of its relatively new regulatory status under FDA jurisdiction, is probably more attuned to the Agency and would, therefore, be in closer contact with Agency officials. (2) The extensive activities of the Bureau of Medical Devices, Office of Small Manufacturers Assistance (OSMA).

TABLE E

RESULTS OF TELEPHONE SURVEY TO FIRMS
NOT HAVING CONTACT WITH THE SBS DESK

	No. of Firms Aware of SBS Desk But Who Had Not Used It	No. of Firms Not Aware of SBS Desk
Regions	10 (10)	18 (10)
Newark	3 (3)	4 (4)
Santa Ana	2 (2)	5 (5)
Atlanta	3 (2)	4 (0)
Chicago	2 (1)	5 (1)

( ) Indicates Number of Medical Device Firms

C. FINDINGS AND CONCLUSIONS

Interviews with each SBR and with the EDRO Small Business Coordinator, as well as conversations with small business persons who had utilized the program, have contributed to our analysis of the program and resultant conclusions and recommendations which follow.

1. Interaction with Bureaus

All four SBR's reported no significant problems in dealing with headquarters. All bureau contacts were said to be very responsive to their information needs. Only "understandable" logistical problems were cited-generally dealing with availability of printed material; i.e., short supply, out-of-print, etc.

2. Secretary/Clerical Support

A December 22, 1978 memo from EDRO to the Deputy Commissioner, "Resource Needs Associated with Small Business Service Pilot Project," states:

> "We believe that each field office SBSD will require two positions (one professional and one clerical). Because of the pilot nature of the project, we will seek to hire temporary clerical help. We are convinced that telephone coverage during the professional's absence, correspondence, and documentation of services performed for later evaluation fully justify this added cost."

Currently, not all of the SBR's have a full-time clerical assistant. Three of the four rely on part of one of the regional/district office secretaries. During the SBR's absence from the office "someone" of several secretaries takes small business inquiries.

We recommend assignment of full time clerical support (secretary or clerk-typist) as originally intended. It is important to the success of the program that persons familiar with the program answer calls in the absence of the SBR and that adequate support is available to quickly respond to requests.

3. Reporting

Prior to program initiation, standard forms for Small Business Representatives reporting were developed by OPE in cooperation with EDRO. These forms have already been modified as a result of user experience and are a primary source of program activity data reflected in this report. This reporting system is functioning to the general satisfaction of OPE, EDRO, the bureaus, and the SBRs with one exception. Monthly summary reports have been received three to four months after closing date. Although much of the delay seems to be in transmission from the field office to Rockville, some improvement in timely reporting could be expected with additional clerical support.

4. Training

Prior to implementation of the pilot program, the Medical Device Specialists underwent a two week training session at the Bureau of Medical Devices, and the Generalists had two weeks of individually-designed training with the Bureaus of Foods and Drugs as well as a very limited amount of training with the Bureaus of Radiological Health and Medical Devices. With the exception of one SBR, who was a former CSO, the SBRs have not received training in the interpersonal contact skills required of their position; i.e., "reaching out" to the public (e.g., conducting workshops, public relations, etc.)

We believe that additional, on-going training dealing with general technological knowledge of the industries for which the SBR is responsible, market concentration, product mix, manufacturing techniques, inspection techniques, etc., and those skills necessary for dealing with the general public would enhance the SBR's effectiveness.

5. Facilities

The December 1978 EDRO memo cited above states, "Space in field offices can probably be arranged with little difficulty."

For the most part, the facilities available to the SBRs are inadequate for meetings with the small businesspersons. Face-to face discussions, as opposed to telephone conversations, was one of the precepts of the local SBR approach and is preferred by some of the businesspersons in place of telephone conversations. Existing facilities vary greatly.

a. Newark, N.J. desk: These facilities are completely inadequate for reception of small business visitors. The unavailability of this option forces the SBR to counter any suggestion of visiting with an offer to go to the firm's office instead. This creates several problems:

- Some managers, still anxious about interaction with FDA, might postpone or cancel the meeting.
- If carried out, however general the discussion, the visit is currently considered and counted as an "on-site visit."

b. Atlanta, Georgia desk: These facilities are deemed adequate but cramped, failing to provide reasonable comfort for a guest of the Agency.

c. Chicago, Illinois desk: Facilities here provide adequate room, comfort, and an attractive office environment. The major shortcoming is lack of privacy. Some small business persons would probably feel insecure discussing their regulatory problems in the regional headquarters office separated from regulatory personnel only by a five foot high partitionette.

d. Santa Ana, California, desk: Not examined, but reportedly a very appropriate arrangement.

We recommend the provision of facilities appropriate for conducting a confidential interview with a guest of the Agency. These should basically include a private room with guest chair and reasonable comfort.

6. On-site Visits

a. Definition

At the firm's request, the SBR may make an on-site visit. During this non-regulatory visit, the SBR reviews and analyzes problems of particular concern to that firm. The specific activities of the SBR during an on-site visit have been loosely defined to allow flexibility and thereby provide individualized assistance to the participating firm.

The January 10, 1979 memo from the Deputy Commissioner, establishing the Small Business Service Desks, defines the purpose of on-site visits to small manufacturers as "ascertaining their information needs; exploring the laws and regulations; and conducting informal audits of the firm's compliance with FDA's requirements."

In practice, reported on-sites have varied from thorough examinations of a manufacturer's plant operations and record keeping practices (e.g., a seven-hour mock GMP inspection and how to fix it) to a brief discussion with the manager in his/her office. Flexibility remains an unqualified goal, but a tighter definition of on-site activities is needed to provide reasonable bounds.

b. Enforcement Problems

During the developmental stages of this program, there was much concern about the effect of on-site visits upon compliance activities.

- Would the SBR's reporting of significant compliance problems to the district office compromise the "good faith" visit by which he/she discovered the out-of-compliance condition?

- Would the SBR's on-site visit and the absence of documented notice to the manufacturer of compliance problems constitute a tacit FDA approval, creating potential conflicts with subsequent inspectional findings?

Through June 1980, 84 on-sites have been conducted. No significant compliance problems have been reported as a result of these visits. All four SBRs report that firms participating in on-sites have appeared to understand fully the SBR's advisory capacity and that the on-site visit does not convey any waiver of responsibility to the firm nor impart any immunity to the firm for violations which may occur, even when recommendations of the SBR are implemented.

It should be noted, however, that the only negative survey response from on-site participants stated dissatisfaction because the SBRs interpretations were not guaranteed to hold up during a later inspection.

7. Supervision of SBRs

The four SBRs in the pilot program have all been attached to the Office of the Regional Food and Drug Director (RFDD). Three of the SBRs report directly to the RFDD while the fourth reports to a subordinate of the RFDD. The SBRs are in somewhat of an awkward position in that they need to have high level support, they benefit from supervision and guidance that is close at hand, and yet to effectively interact with the small business community, they need to be separate from the enforcement activities of the region. Additionally, the SBRs need personnel management guidance to assist them in improving their job and in monitoring their performance.

There is a concern that program continuity will be impaired when an RFDD decides to transfer, detail, or otherwise divert the SBR from the SBSD program. It is important that the SBRs remain continuously available to work as SBRs, interacting with the small business community and not pulled off to work on "crunch" situations in the region on a temporary or permanent basis.

The current approach is to have the SBRs assigned as specific functions out of the RFDD's office, supervised as are other main positions in the immediate office (such as Regional Radiological Health Representatives, Regional Veterinary Medical Officers, etc.). The SBSD program needs a commitment from the RFDDs for extended, dedicated staffing to insure program continuation. The small business coordinator in EDRO can provide overall program support and guidance to the SBSD Program and to the SBRs.

8. Methods of Soliciting Business

The success of the Small Business Service Desk is directly dependent upon the success of the publicity efforts to inform small businesses of the Desks' existence. Four major methods of publicity have been utilized: general public announcements; individually contacting registered firms; attendance at conferences and trade seminars; and conduct of workshops and conferences.

Mass mailing is a widely utilized means of solicitation by several of the SBRs. The ease of these mass mailings has been greatly facilitated by a recent arrangement with EDRO to print mailing labels, by industry, for each of the four regions. Previously, the SBR had to hand-address letters.

The surveys of the 14 small businesses having participated in on-sites and the 28 small businesses having had telephone contacts with an SBR provided the following information as to how the small businesspersons first learned of the Small Business Desk.

Journal announcement	4
Trade seminar/workshop	8
Referred by other FDA office	14
Federal publication	4
Other	12

The "Other" category was composed of five respondents who could not remember how they first learned of the service; three respondents who had learned of the service through a Small Business Representative's mass mailing of a flyer; three respondents who had learned of the service through colleagues; and one respondent who had learned of the service through his professional association.

The survey clearly demonstrates that the majority of contacts resulted from other FDA offices and trade seminars/workshops. Only three small business respondents contacted the SBR after receiving information in the mail. These results suggest that stronger emphasis should be placed on more personal marketing strategies and less emphasis should be placed on mail contacts.

9. Area of Coverage

The four pilot desks (each covering a region) appear suited to the current demand for assistance in each pilot region and should accomodate activity anticipated in the short term future. One desk per region appears to be an appropriate coverage.

10. Generalist vs. Specialist Approach

The two pilot Medical Device Specialist Desks have experienced a larger volume of program activities than have the two generalists. Much of this increased contact, however, may be attributed to the efforts of the Bureau of Medical Devices, Office of Small Manufacturers Assistance (OSMA). OSMA's prior experience with the industry, continuing out-reach efforts, concurrent activities, and assistance to the Specialist SBRs, provided a significant headstart for the SBR Specialists. Added to these factors is the many-faceted uniqueness of the medical device industry as compared to the other FDA-regulated industries.

a. a preponderance of small manufacturers (over 90 percent of the registered firms fall under the Small Business Administration's definition of small business);

b. required registration of active manufacturers;

c. geographic concentration of firms;

d. relatively new regulatory arena, i.e., federal requirements have recently been enacted and are currently being introduced and applied.

Also, the SBRs report that the "dynamic tension" between industry and the regulator appears to have not yet afflicted the majority of this industry.

The Generalists have a much more loosely controlled and diverse universe to work with. Furthermore, their industries have been under regulatory scrutiny for a longer time and the "dynamic tension" is more pervasive, exuding anxiety at the prospect of any contact with FDA personnel.

If the SBSD program is expanded to all regions, that expansion will provide the opportunity to consider three alternative approaches:

a. All Generalists. With one in each region, this approach would require ten SBRs.

b. All Specialists. With one for each FDA program in each region, this approach would entail 60 SBR.

c. Some combination of Generalists and Specialists.

The third approach would provide the unique advantages of a Specialist for those industries where it is found to be most effective and utilize the Generalist approach where it is found to be most effective and/or efficient.

The pilot program has adequately demonstrated the effectiveness of the two Medical Device Specialist Desks. It is apparent, however, that much of their success is attributable to the efforts of OSMA as well as to the unique characteristics of the medical device industry. For these reasons we believe that the results of the pilot cannot necessarily be expected to apply in other industries. More testing of this concept, considering other specialty areas, is needed before a fully valid assessment is made of the value of generalist versus specialist.

We recommend:

- The Medical Device Specialists be continued in Regions II and IX where they may build upon their already established base of small business interactions.
- Other FDA programs be pilot tested with the Specialist approach in a distribution complementing geographic concentrations of industries.
- The Generalists, functioning well in Regions IV and V, be expanded to other regions.

If and when a decision is made to expand the SBSD Program to all 10 regions, we feel that a mixture of specialist and generalist desks be considered and that the first year of such an expansion be treated as a second stage pilot.

Based on industry concentrations informally obtained from EDRO, one format for the expanded program might be as follows:

Regions II and IX	Continue Medical Device Specialists (2)
Regions IV and V	Continue Generalists (2)
Region I	Establish Food Specialist (1)
Region III	Establish Drug Specialist (1)
Region VI	Establish Radiological Health Specialist (1)
Region VII	Establish Veterinary Medicine Specialist (1)
Regions VIII and X	Establish Generalists (2)

Each region would then have one SBR — minimum coverage for a full scale SBSD Program. An evaluation of any such expansion of the program should be conducted after one year. At that time conversion of Specialists to Generalists or vice versa could be readily accomplished. Further expansion could also be accomplished at that time, if appropriate.

11. Effectiveness

The service rendered by the SBRs can enable a broad segment of the regulated industry, composed largely of people unable to retain a permanent regulatory staff, to become informed about FDA policy. Through the SBR service, these firms have a direct tie with their regulatory agency and this should increase their ability to maintain or improve compliance. Additionally, the program should better enable the Agency to be responsive to small business needs.

Measurable aspects of the benefits of the pilot program to the small businesspersons have been identified as: (1) volume of calls received; (2) number of workshops attended and conducted; (3) number of on-sites performed; and (4) survey of participants' opinions.

The major anticipated benefit to FDA was improved compliance in the small business arena. FDA policy has been based on the theory that voluntary compliance can be achieved through increased knowledge of regulatory requirements. In a formula, it is represented by:

Business willingness to obey the law + Sufficient knowledge of regulatory requirements = Voluntary Compliance

Benefit to FDA from the Small Business Service Desk Program ensues from increased value to the second element of this acknowledged formula. This study's surveys demonstrate overwhelmingly that small businesspersons participating to date perceive an increased knowledge of FDA regulatory requirements.

Through examination of the volume and nature of inquiries/responses, the number of workshop attendees, the number of on-site visits, and particularly the content of participant feedback, it appears that the objectives of the Small Business Service Desk Program are being attained.

D. SUMMARY

Evaluation of the one year pilot SBSD Program has shown that the four desks are basically meeting the program objectives, that there is a high degree of interaction with the small business community, that the small business community perceives the desks to be helpful to them, and that they believe it is a program that should be continued. Expansion of the progam is a decision that has to be made from a consideration of Agency resources and competing priorities. The evaluation does, however, support a continuation of the program because it is working well and being received well. There are improvements to be made, but clearly we would recommend continuation.

APPENDIX A

TELEPHONE CONTACTS
NATURE OF DISCUSSIONS

August 1979 - June 1980

	Regions				
	II	IV	V	IX	Total
Drugs	2	46	71	6	125
Foods & Cosmetics	4	199	103	14	320
Biologics	0	0	1	0	1
Vet. Medicine	0	70	10	0	80
Rad. Health	4	76	5	25	110
Medical Devices	361	75	127	546	1109
Non-FDA	1	10	4	3	18
General Info.	15	35	4	11	65
TOTAL	387	511	325	605	1828

January-March 1980

	Regions				
	II	IV	V	IX	Total
Workshop	12	3	3	6	24
On-Site Visit	23	2	1	15	41
Forms & Pubs	27	34	29	108	198
Interpretations & Explanations	56	38	60	66	220
Not Related	3	1	2	4	10
Other	17	14	13	19	63
TOTAL	138	92	108	218	556

Mr. IRELAND. The next witness is from the Federal Communications Commission, Mr. Stephen A. Sharp, General Counsel.

Welcome, Mr. Sharp.

TESTIMONY OF STEPHEN A. SHARP, GENERAL COUNSEL, FEDERAL COMMUNICATIONS COMMISSION

Mr. SHARP. Thank you, Mr. Chairman. My name is Stephen A. Sharp, General Counsel of the Federal Communications Commission. I am pleased to have this opportunity to appear before the subcommittee, and offer some views on the Regulatory Flexibility Act of 1980.

Each of the requests for information contained in your invitation to appear today is addressed either in my testimony, or in materials which I shall submit for the record. I believe those copies of that material have already been given to the staff.

The Federal Communications Commission is mandated by Congress to regulate interstate and foreign telecommunications by wire and radio. Under provisions of the 1934 Communications Act, the FCC licenses some 13 million radio facilities, ranging from large television broadcast stations to individual taxi operators, who have business radio systems in their cabs. The Commission also regulates—among other services—common carrier telecommunications service, which includes long distance service provided by A.T. & T. and other competing carriers, as well as services offered by relatively small carriers. Therefore, the requirements of the act affect a number of our rules.

We have established a comprehensive regulatory review function in the Office of the General Counsel to examine each existing rule, independent of the review contemplated by the Regulatory Flexibility Act's 10-year plan. New proposed rules, which may have a significant economic impact on small entities as contemplated by the act have contained appropriate analyses.

In December 1980, the Commission adopted an internal administrative instruction to all elements of the Commission having rulemaking responsibilities. The provisions of that instruction are to insure that the FCC's rulemakings are in full compliance with the requirements of the Regulatory Flexibility Act. An attorney in the Office of the General Counsel has been appointed regulatory flexibility officer. Under the internal directive, the regulatory flexibility officer is responsible for general compliance with the act.

The officer's duties include determining that each Reg. Flex. analysis comports with the act's requirements, assuring that the Commission's Office of Public Affairs gives notice to small entities of contemplated rulemaking actions, coordinating with the operating bureaus to assure compliance with the act in the proposal and final rule stages of proceedings, and assuring that the semiannual agenda is prepared and transmitted to the Chief Counsel for Advocacy of the SBA.

I would also add that each proposed order is reviewed by an additional division of the General Counsel's Office, and the reg. flex. officer coordinates with that division to insure that, as part of that review, they have ascertained that there is an adequate Reg. Flex. statement.

As I mentioned just a minute ago, the chairman has directed me to establish, in the Office of the General Counsel, a comprehensive regulatory review function to examine each existing rule, independent of the review contemplated by the Regulatory Flexibility Act's 10-year plan.

This regulatory review working group was established in August. We have discussed this effort with the SBA, which has indicated that this approach is consistent with the act's purposes.

The Commission is committed to eliminating rules that are unnecessary or burdensome. This effort depends neither on the size of the business, nor on a 10-year schedule. Most rules have a greater impact on small businesses, because larger companies are better able to absorb compliance costs. Thus, our overall reduction of regulation will convey particularly significant benefits on the small entities regulated by the Commission. We do not intend to wait 10 years to review these rules. This review is to be completed by the end of 1982. We did, nevertheless, adopt a 10-year review plan on July 21, and it has been published in the Federal Register. As far as I know, we are in compliance with that aspect of the act.

As an economic regulatory agency, the Commission examines the economic impact of its rules and proposed rules and policies on both the public and regulated entities. This is, and has been, and will continue to be, an integral part of the rulemaking process. Determining what type of impact meets the act's significant impact test is a difficult and necessarily subjective process. Accordingly, the determination of the significance of any impact should continue to be left exclusively to the agency with expertise in regulating the industry.

I would like to express my uncertainty as to why the act applies to agency initiatives which reduce regulation. It seems somewhat anomalous to engage in the exercise of providing a Reg. Flex. analysis for the deletion or serious reduction of rules. It probably would save agency resources to permit the agency to state simply that a net economic benefit is anticipated from the proposed rule change.

I originally had some questions which I expressed in my statement. I think, Mr. Chairman, the answers in your discussion with Chairman Taylor earlier this morning have answered my questions, and I appreciate having heard them.

I also appreciate the opportunity to share my thoughts with you, and I want to assure you that the Commission will continue to comply fully with the requirements of the act, and I am prepared to answer any questions that you may have.

Mr. IRELAND. That is fine. Thank you, Mr. Sharp.

Just for our record, who is the regulatory flexibility officer?

Mr. SHARP. The original person listed, Renee Licht, is no longer in the General Counsel's office and has been replaced by Don McClure, M-c-C-l-u-r-e.

Mr. IRELAND. The internal administrative instructions, was that included in some of the papers that you have given us? Could we have a copy of that?

Mr. SHARP. I believe it was. If it isn't, you will certainly have it.

Mr. IRELAND. We have had a number of discussions with agencies about data bases and getting information to make analyses. Can you tell us what your experience is along that line? Do you have enough already to do it, or what do you need along that line?

Mr. SHARP. We have a wide variety of businesses, as you can see, and there are two types of businesses that FCC regulations affect. These are the regulated entities themselves and the user.

Let me start with the regulated entities. Regulated entities include, as I mentioned, the taxicab radio. It also includes small market radio stations, which may have 3, 5, 10 employees, all the way up to a network-owned and operated station with hundreds of employees.

We have a great deal of data with respect to the number of employees. We know how much information broadcasters file in their reports with us, so we have a great deal of data in this financial area.

We also have more data than we could possibly ever use, regarding common carriers. We have a great deal of accounting data that they have to provide us.

With respect to users from time to time, we have to request information. We don't directly request it from the user. We simply invite them to provide us with the benefit of their wisdom in particular rulemakings, where the user—in this case I am referring generally to small businesses, that use communications services either private radios or common carrier services—that would be affected.

So the answer to your question is that we have some of the data but not all of it.

Mr. IRELAND. And in some cases, as you indicate, you have a lot more data than you need, and I hope somebody down there can say, "Hey, don't send us this any more."

Mr. SHARP. As a matter of fact, with respect to common carriers, the competitive carrier rulemaking is currently underway. This proposal deals with competitive carriers—smaller common carriers—part of it is issued and part of it is still underway. It will eliminate significantly the amount of paperwork required of small common carriers. A.T. & T. I think, is big enough to fend for itself and it will continue to file a lot of papers to meet the requirements that this Commission has imposed on the common carriers. But the smaller carriers would be relieved of several of those burdens.

Mr. IRELAND. You mentioned a small radio station owner, and I don't think that I am any different from most Congressmen that are in a nonmetropolitan area and has an awful lot of small radio stations. It seems to me that the complaint that I get from small businesses all together, is that they are treated just like the bigs, as in the information that they have to send you. Do you see any relief or easing up on your standards here?

Mr. SHARP. We are moving as quickly as possible to eliminate as much of that paperwork as possible. The chairman has been at the Commission about 5 months. I have been there 4 months. And in that time, we have done this review and we already had some items in the pipeline before we got there.

There is a definite emphasis on removing as much regulation as possible, particularly reporting requirements. Someone who has four or five people just simply does not have time to fill out a large number of forms.

Mr. IRELAND. Especially those that say, "What are you doing in the community," and they come and ask me. They asked me when I was in private industry. In addition to being a waste of their time, it is a waste of people's time. I don't think that any of that information is worthwhile anyway.

Mr. SHARP. I am happy to report, Mr. Chairman, that we have requested that such information be eliminated, and I hope the court will uphold our action.

We have removed the requirement that businesses keep program logs in the form that we previously have prescribed. The station may keep logs on its own, for its billing purposes, but it will no longer be a regulatory requirement. And this was, in itself, the largest paperwork requirement on businesses.

Mr. IRELAND. Mr. Weber.

Mr. WEBER of Ohio. Thank you. Who is the attorney in the Office of General Counsel that's been appointed as regulatory flexibility officer?

Mr. SHARP. That was Renee Licht, and it is now Don McClure.

Mr. WEBER of Ohio. And is that his exclusive function?

Mr. SHARP. After we created the regulatory review working group, Ms. Licht was appointed to another position, Mr. McClure requested to join on this working group. He is now doing both, since they are such parallel tracks.

He is primarily the officer for Reg. Flex., and is also responsible for the working group, which is the broader——

Mr. WEBER of Ohio. Well, I don't understand. Is that his sole function, Reg. Flex?

Mr. SHARP. The working group is a reviewing group for reg flex statements, as well as for targeting unnecessary rules. It's like doing a 10-year agenda for every rule in the Agency, not simply focussing on rules effecting small business. We have one person who is in charge of the overall picture, and then Mr. McClure has a specific focus on small business.

He will work on the overall review, so I couldn't claim that he is working full time, doing nothing but Reg. Flex., but that he focuses on that picture.

Mr. WEBER of Ohio. What is the definition of small, for the purpose of Reg Flex?

Mr. SHARP. We have used the Small Business Act's definition, and at this point, we have studied it, but have not concluded that we need to invent our own definition. So far, the SBA's definition has worked reasonably well.

Mr. WEBER of Ohio. As applied to radio stations, what would that mean?

Mr. SHARP. Well, we could do it on the number of employees or on the amount of gross revenues. There are any number of factors from which to start drawing the line. Let me drop back a second and give you an example of how all broadcasters, even the largest television network affiliate may be considered small.

When you are contrasting the above broadcasters, who are regular television stations, with the creation of a direct broadcast satellite system, which would have home service, and would be owned by obviously a major company because it would cost so much to put it up, even a large network affiliate would appear small.

You wonder if we have these definitions. I know that the SBA had some concerns about those television stations and their interests. These DBS systems would be a much bigger entity. I don't want to get into a sliding scale type of situation, but we have to be able to come to grips with specific dollar amounts, or specific number of people, to make the decision.

Mr. **Weber** of Ohio. So you really don't have a definition?

Mr. **Sharp**. We are using the Small Business Act definition.

Mr. **Weber** of Ohio. What is that definition?

Mr. **Sharp**. The SBA's definition says, "A business which is independently owned and operated, which is not dominant in its field."

Because we deal with such a disparate group of businesses, we would probably have to come up with several dozen definitions and we simply have not done that.

Mr. **Weber** of Ohio. Have there been any regulations that have been changed or adjusted as a result of Reg. Flex., or is it too early for us to expect any?

Mr. **Sharp**. I think Reg. Flex. is a major contributor to the consciousness raising of the regulatory process. And we have a commitment at this Agency now to eliminate as much regulation as possible, and in doing so, we are dealing in the Reg. Flex. analysis and the purpose of that act.

In order to do that, Reg. Flex. analysis becomes a part of the overall decisionmaking process, and when it blends into that decisionmaking process, it is unclear in reading the mind of one Commissioner how much it was Reg. Flex., and how much it was something else.

But we are getting rid of regulations. We are getting rid of a lot of them, and we are working to get rid of more. I would say that Reg. Flex. has been a benefit to our deregulation program.

Mr. **Weber** of Ohio. I don't have any further questions, Mr. Chairman.

Mr. **Ireland**. I don't expect you to answer this, but I understand that one of the major networks has sought relief this May under Reg. Flex., as a small business. So the gentleman has a problem.

Mr. **Weber** of Ohio. Not dominant.

Mr. **Ireland**. Got a bad rating in the poll Mr. Lynch has a rather technical question here for the record.

Mr. **Lynch**. I don't really understand this issue, but I want to raise it here, because we have been asked by the mobile radio people to raise the issue.

I understand there is something called specialized mobile radio systems, and apparently there is a restriction on the owners of these systems by manufacturers, which limits the manufacturers to the owners of a single trunk system, nationwide, and the Commission set this system up quite sometime ago, and it's created a great deal of competition and a great deal of small entities across the country.

Apparently, now there is a proposal to deregulate this, and the fear is that this would wipe all these systems out. One of the major manufacturers could just step in and literally take this system over nationwide, and I wonder if you would just comment briefly on this.

Mr. SHARP. I am not specifically aware of that proposal, but I will check with the Private Radio Bureau and see what the status is.

SMR, a new development in the last several years, seems to have worked quite well in allowing small businesses to own and use their own radios.

In fact, SMR is used to boost their power to communicate with their communities. The manufacturers now, as you pointed out, are limited to one system, so they can pick whatever city they want and apply for a license and get it, and that's it.

Obviously, to expand the manufacturers' ownership, it would raise some serious questions under Reg. Flex., and I think that is obviously something we will take a very long look at.

Mr. LYNCH. I have two docket numbers: 79-191, and 79-324. Will you try to get some more information?

Mr. SHARP. We will check into that and get back to you.

Mr. IRELAND. Mr. Sharp, thank you. We appreciate it.

[Material requested during testimony follows:]

FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

NOV 20 1981

IN REPLY REFER TO:
3010

Honorable Andy Ireland
Chairman, Subcommittee on Export
Opportunities
Committee on Small Business
U.S. House of Representatives
Washington, D.C. 20515

Dear Chairman Ireland,

As you requested during my testimony before your subcommittee on October 21, 1981, I am enclosing the Federal Communications Commission's internal policy statement on the Regulatory Flexibility Act, the list of rules to be reviewed under the Regulatory Flexibility Act during 1981-1982 and our semi-annual agenda of significant proceedings. Our internal policy statement was circulated as an interim statement and has been modified by verbal instruction as needed.

In response to a question asked by your Counsel, Mr. Lynch, I stated that I would provide you information on the status of the FCC's Specialized Mobile Radio Systems (SMRS) Rulemaking, Dockets 79-191 and 79-334. Our Further Notice of Proposed Rulemaking, issued on July 14, 1981, suggested two alternative proposals. The first proposal would allow equipment manufacturers to operate one trunked system per market area as defined by the 40 dBu contour (approximately 20 miles from the transmitter site). Manufacturers are now authorized to operate only one trunked system nationwide. The second proposal would allow equipment manufacturers to own numerous systems in one geographical area. Public comments on this rulemaking were due by October 30, 1981 and reply comments are due by November 30, 1981.

Your counsel expressed concern about this rulemaking's effect on small businesses. Small entrepreneurs own many of these trunked systems. The early comments received by these entrepreneurs expressed concern that allowing manufacturers to own more than one system nationwide would be highly detrimental to their existing businesses and that many of them would be forced out of the marketplace entirely.

This rulemaking will be considered early next year after the comments have been studied. We recognize the concerns of these small businesses and plan to study the effects of this rulemaking and any alternatives possible and of course, prepare a complete Regulatory Flexibility Analysis.

I hope this information is helpful to you and your subcommittee If I can be of further assistance, please contact me.

Sincerely yours,

Stephen A Sharp

Stephen A. Sharp

UNITED STATES GOVERNMENT
memorandum

TE: December 12, 1980

O
OF: Executive Director

CT: Regulatory Flexibility Act of 1980 (P.L. 96-354)

TO: Bureau and Office Chiefs; Division Chiefs with Rulemaking Responsibilities

1. Purpose.

To establish standard practices for implementation of the Regulatory Flexibility Act (P. L. 96-354) within the Commission. This memorandum provides a checklist of staff responsibilities and then discusses these responsibilities in more detail.

2. Background.

The Regulatory Flexibility Act (Reg Flex Act) will take effect January 1, 1981.

Through this Act, small businesses, small non-profit organizations, and small government jurisdictions (collectively: "small entities") will be given an expanded opportunity to participate in rulemaking actions which affect them, and the regulatory agencies will be required to give special consideration to small entities' concerns. Briefly, the Act will require each agency to perform special analyses for proposed rules that would have a "significant economic impact on a substantial number of small entities," to review existing rules that have such an effect, and to publish an agenda of upcoming proposals that would have this effect.

The Act states that the adequacy of agency compliance with its requirements is exempt from judicial review, but compliance is nonetheless essential. The effect of the exemption is uncertain because the contents of the analyses required by the Act are expressly made a part of the rulemaking record for review. The Act also provides for a rule to lapse automatically under some circumstances (discussed below) if analysis requirements are not met. Thus, litigation may be expected which threatens Commission rules on the basis of whether the Act's requirements were met. In addition, detailed congressional oversight may be expected, and this oversight will be aided by a report to Congress on each agency's compliance which must be prepared by the Office of Advocacy of the Small Business Administration.

3. Checklist of Responsibilities of Commission Staff:

  a. Chiefs, Bureau and Office (B/O) Policy Divisions:

    (1) make a preliminary determination whether a particular proposed rule would "have a significant economic impact on a substantial number of small entities;" and then

      (a) if the proposed rule would not have such an effect,

        (i) recommend that the Commission so certify in the Notice of Proposed Rulemaking (NPRM); and

        (ii) publish that certification, plus the reasons therefor, in the *Federal Register*;

        (iii) transmit a copy of the certification and statement of reasons to the Chief Counsel for Advocacy of the Small Business Administration (Chief Counsel/SBA).

      (b) if the proposed rule might have such an effect,

        (i) complete an intitial regulatory flexibility analysis (IRFA) and include it in the NPRM;

        (ii) publish the IRFA or a summary thereof in the *Federal Register*;

(iii) transmit a copy of the IRFA to the Chief Counsel/SBA.

(iv) assure that small entities obtain an opportunity to participate in the rulemaking, and document efforts made to this effect, such as publishing the NPRM in publications of interest to the affected small entities;

(v) prepare a final regulatory flexibility analysis (FRFA) to accompany the final rule, and publish in the Federal Register directions for the public to obtain copies of it;

(2) submit on April 1 and November 1 of each year -- for inclusion in the required semi-annual agenda -- a list of those proposed rules that are likely to affect small entities and which are expected to be considered or promulgated during the subsequent 12 months.

(3) establish -- for publication in the Federal Register within 180 days from January 1, 1981 -- a schedule for the 10 year review of existing rules that have or will have a significant impact on a substantial number of small entities; also, compile annually a list of rules that will be reviewed during the succeeding 12 months.

b. General Counsel:

(1) ensure consistency in implementing the Act within the Commission and provide advice and guidance when requested.

(2) review proposed NPRM's, RM's, and other documents for the Commission agenda to ensure legal compliance with the requirements of the Reg Flex Act.

c. Executive Director:

(1) issue updates to this instruction and ensure the maintenance of required procedures;

(2) act as the Commission's liaison with the Small Business Administration (SBA); and

(3) coordinate the publication of:

  (a) the semi-annual agenda of proposed rulemakings that are likely to affect small entities;

  (b) the 10 year plan for review of all Commission rules that have the threshold significant impact on small entities; and

  (c) the annual list of rules to be reviewed during the upcoming year;

(4) provide notice of the semi-annual agenda to small entities or their representatives and invite comments thereon; and

(5) forward a copy of the semi-annual agenda to the Chief Counsel/SBA for comment.

4. Discussion.

a. Screening for significant economic impact.

Each B/O must review all its proposed rulemakings for significant economic impact on a substantial number of small entities. Rules of particular applicability are exempted from the Act's requirements. "Economic impact" includes reporting requirements, direct and indirect costs, and competitive effects. The B/O will, in consultation with OGC, recommend threshold levels of "significant impact" to the Commission. The positive or negative nature of the impact is not relevant; in either case, analysis is required.

b. Definitions.

The Reg Flex Act definition of a "small business" is the Small Business Act's definition of a "small business concern;" that is, one which is "independently owned and operated and which is not dominant in its field." 15 U.S.C. §632. The Small Business Act definition also gives the SBA authority, in making a "detailed" definition of a small business, to establish quantitative standards based, for example, on gross annual receipts or number of employees. No such standards have been established by the SBA for the purposes of the Reg Flex

Act, and thus no numerical standards now apply. Each B/O should attempt to prepare the required analyses utilizing the basic Reg Flex Act definitions of a "small business," "small organization" (a not-for-profit enterprise which is independently owned and operated and not dominant in its field), and "small government jurisdiction" (one with a population of fewer than 50,000 persons). If one or more of these definitions is entirely inappropriate, completely different definitions may be substituted as discussed below. In any event, B/O's should (as now) consider other distinctions between regulated entities -- including quantitative distinctions -- which could beneficially form the basis for separate regulatory treatment (e.g., Broadcast Bureau's exemption from EEO reporting requirements for licensees with fewer than 5 employees). Such a distinction would constitute a new definition of "small business" or other small entity. The new definition could be used for a single rule or group of rules or -- if a natural dividing line exists -- for all subsequent Commission rules in that area.

The Reg Flex Act allows an agency to change the Act's definitions so that more appropriate distinctions between regulated entities may be recognized. Before a definition may be changed, several steps are necessary:

(1) the new definition must be published in the *Federal Register*;

(2) the public must be given an opportunity to comment; and

(3) for "small business" definitions only, the Chief Counsel/SBA must be consulted.

These requirements may be met during the course of a rulemaking, and thus a definition may be modified and applied in a single rulemaking. Each B/O should exercise caution in adopting new definitions to assure that such definitions are appropriate to the particular rule and, more important, consistent with the Commission's overall regulatory scheme.

c. Initial Regulatory Flexibility Analysis.

(1) The IRFA is a preliminary assessment of the proposed rule's impact on small entities, and it is to be published with the NPRM. Each B/O should complete the analysis as an integral part of designing the rule and should include the following:

(a) the reasons for considering agency action;

(b) the objectives and legal basis of the rule;

(c) a description of the small entities affected, and, where feasible, an estimate of their number;

(d) the expected reporting, recordkeeping, and other compliance requirements of the rule, including, for each requirement, an estimate of the types of small entities affected and a description of the professional skills required to prepare the required documents; and

(e) identification, to the extent practicable of other federal rules which might duplicate, overlap, or conflict with the proposed rule.

(2) Each B/O should, as part of the analysis, present any significant alternatives to the proposal which would accomplish the objectives of the Communications Act or other applicable statute, yet minimize the economic impact on small entities. The IRFA should discuss such topics as:

(a) alternative reporting/compliance requirements or timetables in consideration of small entities' lesser resources;

(b) plans to clarify, consolidate, or simplify requirements or timetables in consideration of small entities' lesser resources;

(c) use of performance as a standard for compliance as opposed to program design; and

(d) a partial or total exemption from the rule for small entities.

d. Encouraging Small Entity Participation.

For proposed rules that would have a significant economic impact on a substantial number of small entities, each B/O must take responsibility for proposing and implementing ways to assure that affected small entities receive notice of the rulemaking and have an opportunity to participate. The Reg Flex Act lists suggested techniques:

(1) in any advanced notice of proposed rulemaking, include notice that a significant effect on small entities may result;

(2) publish the NPRM in publications likely to be obtained by small entities;

(3) notify interested small entities directly;

(4) conduct open conferences or public hearings for small entities; and

(5) adopt or modify agency procedural rules to reduce the cost or complexity of participation in the rulemaking by small entities.

The Office of Public Affairs will work with each B/O to meet these obligations.

e. Final Regulatory Flexibility Analysis.

Each B/O must prepare an FRFA when the final rule is published unless the Commission has certified that the rule will have no significant impact on a substantial number of small entities.

The FRFA must include:

(1) a statement of the need for, and objectives of, the rule;

(2) a summary of issues raised by public comments on the IRFA, an assessment of those issues, and a statement of any resulting changes in the rule; and

(3) a description of each significant alternative studied and a statement of the reasons for rejection of each such alternative.

f. Semi-Annual Agenda.

(1) In April and November, the Commission must publish a list of rules planned for consideration or implementation which would be likely to have a significant economic impact on a substantial number of small entities.

(2) On April 1 and November 1 each year, each B/O must submit to the Management and Analysis Branch:

(a) the title of the regulation;

(b) the RM or docket number;

(c) a brief description of the rule;

(d) the objectives of the rule;

(e) a schedule for completion of the term (if an NPRM has been issued); and

(f) a contact name and telephone number.

[In addition, when the Commission has directed the staff to study an area for possible Commission action, a description of the subject area must be included in the published list, with a contact name and telephone number.]

g. Exemptions and Delays.

(1) Any proposed rule can be exempted from the Reg Flex Act's analysis requirements by a Commission certification that the rule does not have the required "significant economic impact on a substantial number of small entities." The B/O will review each proposed rule and recommend exemption to the Commission, when appropriate. The certification may be issued when the NPRM is published, or later in the process, the rule can be exempted from preparation of a FRFA based on comments received or on further study of the topic. In either case, the Commission's certification must be published in the *Federal Register* with the reasons therefor.

(2) The IRFA may be delayed or waived altogether if the Commission declares it impractical.

(3) The FRFA cannot be waived but it may be delayed 180 days from the publication date of the final rule in the *Federal Register*. *However, failure to complete the analysis within 180 days will cause a rule to*

lapse and have no effect. The rule then cannot be reinstated until completion of the FRFA.

h. Review of Existing Rules.

(1) Each B/O must establish a schedule to review existing rules under the principles announced in the Reg Flex Act. The Commission must publish an overall plan for such review within 180 days from January 1, 1981. The review for rules predating January 1, 1981, will be completed by January 1, 1991. Rules promulgated after January 1, 1981, will be reviewed within 10 years of their publication as final rules. During the review, the following factors should be considered:

(a) the continued need for the rule;

(b) comments or complaints received from the public concerning the rule;

(c) the complexity of the rule;

(d) overlap with other federal rules or, as practical, with state or local government rules; and

(e) changes in technology since the orignial RM.

(2) Each year, each B/O must provide the Executive Director with a list of the rules to be reviewed during the upcoming 12 months for publication in the Federal Register. The list must include:

(a) a brief description of the rule;

(b) the need for and legal basis of the rule;

(c) an intention for public comment on the rule;

6. Effective Date.

This directive is effective immediately.

Before the
Federal Communications Commission
Washington, D. C. 20554

FCC 81-487
30305

Federal Communications Commission's List of Rules to be Reviewed Pursuant to Section 610 of the Regulatory Flexibility Act During 1981-1982))))) GEN Docket No. 81- 706

NOTICE

Adopted: October 21, 1981 ; Released: October 30, 1981

By the Commission:

1. On July 29, 1981, the Federal Communications Commission released its Regulatory Flexibility Act (RFA) (5 U.S.C. §601 *et seq.*) plan for periodic review of all rules issued by the agency which have, or will have, a significant economic impact upon a substantial number of small entities. See 46 Fed. Reg. 39183 (July 31, 1981). Attached to the Commission's plan was a table outlining a broad schedule for reviewing FCC regulations toward the ends specified by the RFA during the next five years.

2. In accordance with the foregoing plan, the staff has reviewed the subparts of the Commission's regulations targeted for review from September 1981 through August 1982. The attached Appendix lists specific rules or closely related groups of rules which are to be examined pursuant to Section 610(c) of the RFA during the first year of the Commission's RFA review. The public is invited to comment on these rules. Comments should address the following: (1) the nature of the economic impact the rule(s) has (or have) on the commenting party, (2) the continued need for the rule(s), (3) the complexity of the rule(s); (4) the extent to which the rule(s) overlap(s), duplicate(s) or conflict(s) with other Federal rules, and, to the extent feasible, with state and local governmental rules; (5) the degree to which technology, economic conditions, or other factors have changed in the area affected by the rule(s); (6) any other matters that would facilitate an informed review of the specified regulations.

3. The Commission, by its Regulatory Review Working Group (RRWG), is undertaking a much broader review of all rules and policies with the objective of eliminating those which no longer serve the public interest. The annual review being conducted in accordance with the RFA is distinct from but complements the broader effort being pursued by the RRWG. Therefore, to the maximum extent feasible, the material generated with respect to RFA requirements will be considered in conjunction with the Commission's regulatory review effort.

4. The accompanying Appendix specifies, for each rule or group of rules listed, the Bureau or Office responsible for evaluating comments on the designated rules. To enhance the efficiency of the reviewing process, parties are asked to submit comments directed to each reviewing Bureau or Office in a separately captioned filing. Commenting parties should submit one original and one copy of each filing to the Secretary, Federal Communications Commission, 1919 M Street, N.W., Washington, D.C. 20554.1/ Comments should specify the docket number of this proceeding and the name of the reviewing Bureau or Office. Thus, for example, a party wishing to comment on the rules designated in Parts 22 and 74 must submit two separate sets of comments; comments on Part 22 captioned General Docket 81-706 (Common Carrier Bureau -- Mobile Services Division) and comments on Part 74 captioned General Docket 81-706 (Broadcast Bureau).

5. Interested parties may file comments within 30 days from the date this Notice is published in the Federal Register.

FEDERAL COMMUNICATIONS COMMISSION

William J. Tricarico
Secretary

1/ The original will be placed in the public docket and the Secretary will forward the copy to the appropriate Bureau or Office.

APPENDIX

Reviewing Bureau/ Office	47 C.F.R.	Title/Description	Need	Legal Basis
Office of Science and Technology	Part 2, Subpart J	Equipment Authorization Procedures -- Type Approval; Type Acceptance and Certification	These rules implement Section 302 of the Communications Act. Radio-frequency devices may not be marketed unless they have received an appropriate equipment authorization. Subpart J defines the types of authorizations, the process by which one applies for and receives them, and relevant measurement procedures to be used to assure the Commission that devices comply with its technical standards.	47 U.S.C. §§302, 303(r)
	2.909	Written application required.		
	2.915	Grant of application.		
	2.917	Dismissal of application.		
	2.919	Denial of application.		
	2.921	Hearing on application.		
	2.925	Identification of equipment.		
	2.927	Limitations on grants.		
	2.929	Nonassignability of an equipment authorization.		

Reviewing Bureau/ Office	47 C.F.R.	Title/Description	Need	Legal Basis
Office of Science and Technology	2.931	Responsibility of the grantee	" "	" "
	2.932	Modification of equipment.		
	2.933	Change in identification of equipment.		
	2.934	Change in name of grantee.		
	2.935	Change in control of grantee.		
	2.936	FCC inspection.		
	2.937	Equipment defect and/or design change.		
	2.938	Retention of records.		
	2.939	Revocation or withdrawal of equipment authorization.		
	2.941	Availability of information relating to grants.		
	2.943	Submission of equipment for testing.		
	2.945	Sampling tests of equipment compliance.		
	2.963	Application for type approval.		
	2.965	Submission of equipment for type approval testing.		
	2.967	Changes in type approved equipment.		

Reviewing Bureau/ Office	47 C.F.R.	Title/Description	Need	Legal Basis
Office of Science and Technology	2.969	Identification label for type approved equipment.	" "	" "
	2.983	Application for type acceptance.		
	2.985	Measurements required: RF power output.		
	2.987	Measurements required: Modulation characteristics.		
	2.989	Measurement required: Occupied bandwidth.		
	2.991	Measurements required: Spurious emissions at antenna terminals.		
	2.993	Measurements required: Field strength of spurious radiation.		
	2.995	Measurements required: Frequency stability.		
	2.997	Frequency spectrum to be investigated.		
	2.999	Measurement procedure		
	2.1001	Changes in type accepted equipment.		
	2.1003	Identification label for type accepted equipment.		
	2.1033	Application for certification under Part 15.		
	2.1035	Abbreviated procedure for identical or private label equipment.		

Reviewing Bureau/ Office	47 C.F.R.	Title/Description	Need	Legal Basis
Field Operations Bureau	Part 17	Construction, Marking, Lighting of Antenna Structures.	The purpose of the rules in this part is to prescribe certain procedures and standards, developed in conjunction with the Federal Aviation Administration (FAA), with respect to the Commission's consideration of proposed antenna structures.	47 U.S.C. §154 and 303
	17.1	Basis and purpose.	" "	" "
	17.2	Definitions.		
	17.4	Commission consideration of proposed antenna structure with respect to possible hazard to air navigation.		
	17.7	Antenna structures requiring notification to the FAA.		
	17.8	Establishment of antenna farm areas.		
	17.9	Designated antenna farm areas.		
	17.10	Antenna structures over 304.80 meters (1,000 feet) in height.		
	17.14	Certain antenna structures exempt from notification to the FAA.		
	17.17	Existing structures.		
	17.21	Painting and lighting, when required.		
	17.22	Particular specifications to be used.		
	17.23	Specifications for the granting of antenna structures in accordance with §17.21		

Reviewing Bureau/ Office	47 C.F.R.	Title/Description	Need	Legal Basis
Office of Science and Technology	15.335	Operation in the band 88-108 MHz.	" "	" "
	15.337	Operation on other frequencies.		
	15.341	Interference from an auditory training system.		
	15.345	Certification of receiver.		
	15.347	Equipment authorization for transmitter.		
	15.351	Frequencies available in the band 72-76 MHz.		
	15.353	Transmitter frequency tolerance (72-76 MHz).		
	15.355	Transmitter power (72-76 MHz).		
	15.357	Transmitter modulation requirements (72-76 MHz).		
	15.359	Transmitter emissions out of band (72-76 MHz).		
	15.361	Receiver frequency stability (72-76 MHz).		
	15.363	Receiver selectivity and desensitization (72-76 MHz).		
	15.365	Receiver image frequency rejection (72-76 MHz).		
	15.367	Receiver emission limitation (72-76 MHz).		
	15.375	Identification of Auditory Training equipment (72-76 MHz).		
	15.377	Measurement of field strength.		

Reviewing Bureau/ Office	47 C.F.R.	Title/Description	Need	Legal Basis
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	17.17	Existing structures.		
	17.21	Painting and lighting, when required.		
	17.22	Particular specifications to be used.		
	17.23	Specifications for the granting of antenna structures in accordance with §17.21		

Reviewing Bureau/ Office	47 C.F.R.	Title/Description	Need	Legal Basis
Field Operations Bureau		Aviation Red Obstruction Lighting	" "	" "
	17.24	Specifications for the lighting of antenna structures up to and including 45.72 meters (150 feet) in height.		
	17.25	Specifications for the lighting of antenna structures over 45.72 meters (150 feet) up to and including 91.44 meters (300 feet) in height.		
	17.26	Specifications for the lighting of antenna structures over 91.44 meters (300 feet) up to and including 137.16 meters (450 feet) in height.		
	17.27	Specifications for the lighting of antenna structures over 137.16 meters (450 feet) up to and including 182.88 meters (600 feet) in height.		
	17.28	Specifications for the lighting of antenna structures over 182.88 meters (600 feet) up to and including 228.60 meters (750 feet) in height.		
	17.29	Specifications for the lighting of antenna structures over 228.60 meters (750 feet) up to and including 274.32 meters (900 feet) in height.		
	17.30	Specifications for the lighting of antenna structures over 274.32 meters (900 feet) up to and including 320.04 meters (1,050 feet) in height.		
	17.31	Specifications for the lighting of antenna structures over 320.04 meters		

Reviewing Bureau/ Office	47 C.F.R.	Title/Description	Need	Legal Basis
Field Operations Bureau		(1,050 feet) up to and including 365.76 meters (1,200 feet) in height.	" "	" "
	17.32	Specifications for the lighting of antenna structures over 365.76 meters (1,200 feet) up to and including 411.48 meters (1,350 feet) in height.		
	17.33	Specifications for the lighting of antenna structures over 411.48 meters (1,350 feet) and up to and including 457.20 meters (1,500 feet) in height.		
	17.34	Specifications for the lighting of antenna structures over 457.20 meters (1,500 feet) up to and including 502.92 meters (1,650 feet) in height above the ground.		
	17.35	Specifications for the lighting of antenna structures over 502.92 meters (1,650 feet) up to and including 548.64 meters (1,800 feet) in height.		
	17.36	Specifications for the lighting of antenna structures over 548.64 meters (1,800 feet) up to and including 594.36 meters (1,950 feet) in height.		
	17.37	Specifications for the lighting of antenna structures over 594.36 meters (1,950 feet) up to and including 640.08 meters (2,100 feet) in height.		
	17.38	Specifications for the lighting of antenna structures over 640.08 meters (2,100 feet) in height.		

Reviewing Bureau/ Office	47 C.F.R.	Title/Description	Need	Legal Basis
Field Operations Bureau		High Intensity White Obstruction Lighting		
	17.39	Specifications for the high intensity lighting of antenna structures having a skeletal tower up to and including 91.44 meters (300 feet) in height.	" "	" "
	17.40	Specifications for the high intensity lighting of antenna structures having a skeletal tower over 91.44 meters (300 feet) up to and including 182.88 meters (600 feet) in height.		
	17.41	Specifications for the high intensity lighting of antenna structures having a skeletal tower over 182.88 meters (600 feet) up to and including 304.80 meters (1000 feet) in height.		
	17.42	Specifications for the high intensity lighting of antenna structures having a skeletal tower over 304.80 meters (1000 feet) in height.		
	17.43	Painting and lighting of new and existing structures.		
	17.45	Temporary warning lights.		
	17.47	Inspection of tower lights and associated control equipment.		

Reviewing Bureau/ Office	47 C.F.R.	Title/Description	Need	Legal Basis
Field Operations Bureau	17.48	Notification of extinguishment or improper functioning of lights.	" "	" "
	17.49	Recording of tower light inspections in the station record.		
	17.50	Cleaning and repainting.		
	17.51	Time when lights should be exhibited.		
	17.53	Lighting equipment and paint.		
	17.54	Rated lamp voltage.		
	17.56	Maintenance of lighting equipment.		
	17.57	Report of radio transmitting antenna construction, alteration and/or removal.		
	17.58	Facilities to be located on land under the jurisdiction of the U.S. Forest Service or the Bureau of Land Management.		

Reviewing Bureau/ Office	47 C.F.R.	Title/Description	Need	Legal Basis
Common Carrier Bureau (Mobile Services Division)	Part 22	Public Mobile Radio Services	These rules are needed to provide for the various practical aspects of how carriers make mobile services available to the public, i.e. they set standards to prevent electrical interference; give guidelines for operating base stations, control points and mobile units; establish technical limitations on facilities; list frequencies available, set priorities for operation; describe procedural and substantive requirements; and explain the public's rights and obligations.	47 U.S.C. §§154(i) and 303(r)
	22.2	Definitions.	" "	"
	22.15	Technical content of applications.		
	22.20	Defective applications.		
	22.23	Amendment of Applications.		
	22.27	Public Notice period.		
	22.31	Mutually exclusive applications.		
	22.43	Period of construction.		
	22.103	Standards and limitations governing authorization and use of frequencies in the 72-76 MHz band.		
	22.117	Transmitter location.		

Reviewing Bureau/ Office	47 C.F.R.	Title/Description	Need	Legal Basis
Common Carrier Bureau (Mobile Services Division)	22.118	Transmitter construction and installation.	" "	" "
	22.121	Replacement of equipment		
	22.122	Microwave digital modulation		
	22.205	Operator requirements.		
	22.208	Stations records.		
	22.209	Communications concerning safety of life and property.		
	22.213	Station identification.		
	22.501	Frequencies		
	22.507	Bandwidth and emission limitations.		
	22.508	Modulation requirements.		
	22.509	Permissible communications.		
	22.511	Communication service to own mobile units.		
	22.513	Location of message center.		
	22.515	Control points, dispatch points and dispatch stations.		
	22.516	Additional showing required with application for assignment of additional channel or channels.		

Reviewing Bureau/ Office	47 C.F.R.	Title/Description	Need	Legal Basis
Common Carrier Bureau (Mobile Services Division)	22.519	Use of mobile station frequency for dispatch station.	" "	" "
	22.520	Notification of operation of dispatch station without specific authorization.		
	22.605	Modulation requirements.		
	22.1004	Modulation requirements.		

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Reviewing Bureau/ Office	47 C.F.R.	Title/Description	Need	Legal Basis
Common Carrier Bureau (Domestic Facilities Division)	Part 25, Subpart C	Satellite Communications -- Technical Standards	These regulations establish the technical standards to be adhered to by licensees of satellite radio facilities in order to avoid radio interference between satellite radio systems and between satellite and other radio systems sharing the same radio spectrum.	47 U.S.C. §§154(i), 303 and 403
	25.201	Definitions.	" "	" "
	25.202	Frequencies, frequency tolerance and emission limitations.		
	25.203	Choice of sites and frequencies.		
	25.204	Power limits.		
	25.205	Minimum angle of antenna elevation.		
	25.206	Station identification.		
	25.207	Cessation of emission.		
	25.208	Power flux density limits.		
	25.209	Antenna performance standards.		

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Reviewing Bureau/ Office	47 C.F.R.	Title/Description	Need	Legal Basis
Common Carrier Bureau (Accounting and Audits Division)	Part 31	Uniform System of Accounts for Class A and Class B Telephone Companies.	The USDA regulations specified in these rule parts permit the Commission to prescribe the forms of any and all accounts, records, and memoranda to be kept by carriers subject to the Communications Act, including the accounts, records, and memoranda of the movement of traffic, as well as of receipts and expenditures of money.	47 U.S.C. §220(a)
			" "	" "
	Part 33	Uniform System of Accounts for Class C Telephone Companies.		
	Part 34	Uniform System of Accounts for Radiotelegraph Carriers.		
	Part 35	Uniform System of Accounts for Wire-Telegraph and Ocean-Cable Carriers.		

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Reviewing Bureau/ Office	47 C.F.R.	Title/Description	Need	Legal Basis
Common Carrier Bureau	Part 43	Reports of Communications Common Carriers and Certain Affiliates	" "	" "
	43.51	Contracts and concessions.	This rule requires filing with the FCC copies of certain contracts, agreements, concessions, licenses, authorizations or other arrangements with respect to Communications traffic affected by the Act. To the extent the Act permits such contracts, this rule permits the FCC to monitor contracts to ascertain the impact on the just and reasonable rates required by the Act.	47 U.S.C. §§154(i) and 211
	43.52	Reports of negotiations regarding foreign communications matters.	This rule permits the FCC to monitor negotiations in order to ascertain their impact on the just and reasonable rates required by the Act.	" "
	43.53	Reports regarding division of international telegraph communication charges.	This rule permits the FCC to monitor the determination of division of revenues in order to insure implementation of Commission policy and to ascertain impact on the just and reasonable rates required under the Act.	47 U.S.C. §§154(i), 211, and 222
	43.54	Reports regarding services performed by telegraph carriers.	This rule requires notice of non-tariffed service being provided by the regulated telegraph carrier to enable the FCC to guard against potential subsidization of unregulated services by regulated services.	47 U.S.C. §§154(i) and 215

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Reviewing Bureau/ Office	47 C.F.R.	Title/Description	Need	Legal Basis
Common Carrier Bureau	Part 61	Tariffs	These rules were designed to ensure that all tariffs are formally sound and well organized, and provide both the FCC and the public with cost data and other information needed for proper analysis under the standards of the Act. Certain of these rules recognizes differences between tariff filings made by dominant and non-dominant carriers by relaxing requirements in the latter case.	47 U.S.C. §§154(i), 201 through 205

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Reviewing Bureau/ Office	47 C.F.R.	Title/Description	Need	Legal Basis
	Part 63	Extension of Lines and Discontinuance of Service by Carriers.	These rules are designed to fulfill legal requirements of Section 214 of the Communications Act regarding extension, construction and acquisition of channels of communications by common carriers and provide a vehicle for the FCC to authorize resale common carriers.	47 U.S.C. §214
	63.01	Contents of application.	" "	" "
	63.07	Special procedures for non-dominant domestic common carriers and domestic satellite common carriers.		" "
	63.52	Copies required; fees	" "	47 U.S.C. §154(i)

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Reviewing Bureau/ Office	47 C.F.R.	Title/Description	Need	Legal Basis
Common Carrier Bureau	63.53	Form.	These four rules sections set forth the FCC's policy concerning a telephone company's provision and ownership of cable television service in its telephone service area. The rules are designed to carry out the telephone-cable television cross-ownership policy adopted in Docket 18509, 21 FCC 2d 307 (1970).	47 U.S.C. §151(i)
	63.54	Furnishing of facilities for cable television service to the viewing public.	" "	47 U.S.C. §§154(i) and 214
	63.55	Affiliation showings	" "	" "
	63.56	Waivers	" "	" "
		* * * *		
	64.501	Recording of telephone conversations with telephone companies	Sets forth conditions pursuant to which telephone companies may record telephone conversations between the public and a telephone company officer or agent or any other person acting for or employed by the telephone company.	47 U.S.C. §154(i)

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Reviewing Bureau/ Office	47 C.F.R.	Title/Description	Need	Legal Basis
Common Carrier Bureau	Part 68, Subpart C	Connection of Terminal Equipment to the Telephone Network -- Registration Procedures.	FCC utilizes these rules to carry out its registration program, which is designated to assure that terminal equipment connected to the nation's communications network does not harm that network.	47 U.S.C. §154(i)
	68.200	Application for equipment registration.		
	68.202	Public Notice.		
	68.204	Comments and replies.		
	68.206	Grant of application.		
	68.208	Dismissal and return of application.		
	68.210	Denial of application.		

Reviewing Bureau/ Office	47 C.F.R.	Title/Description	Need	Legal Basis
Broadcast Bureau	Part 74, Subpart D	Remote Pickup Broadcast Stations	These rules specify the ways in which remote pickup broadcast stations may be used. These stations include both base stations and mobile stations and are associated with broadcasting stations with which they are principally used and to which they are licensed. They may be used for transmission of material from the locale of events occuring outside the studio and for transmission of cues and orders or related communications necessary to effect a broadcast.	47 U.S.C. §§302(a), 303(a)-(c), 303(f), 303(g) and 303(r)
	74.431	Special rules pertaining to use of this service; communications between stations; remote location operation; FCC authority; communications of cues, orders, instructions, etc.; operation outside conterminous USA; use for operational communications; use in an emergency; use with EBA.	" "	" "
	74.432	Requirements and procedures pertaining to licensing.		
	74.433	Requests and grants for temporary authorization to operate.		
	74.434	Regulations regarding remote control operation.		
	74.436	Requirements for authorization and installation of automatic relay stations.		

Reviewing Bureau/ Office	47 C.F.R.	Title/Description	Need	Legal Basis
Broadcast Bureau	74.462	Operation of type accepted equipment in accordance with emission and bandwidth specifications.	" "	" "
	74.463	Requirements for modulation devices.		
	74.465	Measurements and monitoring of frequencies		
	74.467	License and authorization posting.		
	74.468	Requirements for operators; operation; repair and maintenance.		
	74.469	Maintenance and lighting of antenna structures.		
	74.481	Entries in and keeping of logs and records.		
	74.482	Rules pursuant to identification stations.		
Broadcast Bureau	Part 74, Subpart E	Aural Broadcast STL and Intercity Relay Stations	These rules define the nature and use of those facilities. Studio transmitter links (STLs) are fixed stations used for transmission of aural program material from a station's studio to its transmitter for either simultaneous or delayed broadcast; and an intercity relay station transmits such material between broadcast stations.	47 U.S.C. §§302(a), 303(a)-(c), 303(f), 303(g) and 303(r)
	74.502	Assignment of frequencies and the conditions pertaining to the use thereof.	" "	" "
	74.531	Permissible service conditions; multiplexing; and permission to use another stations transmissions.		

Reviewing Bureau/ Office	47 C.F.R.	Title/Description	Need	Legal Basis
Broadcast Bureau	74.532	Requirements pertaining to licensing of STL's and intercity relay stations.	" "	" "
	74.533	Operating unattended and by remote control.		
	74.551	Equipment change application and notification.		
	74.562	Measuring frequency and determining maintainance of allowed frequency tolerances.		
	74.565	Requirements pertaining to operators.		
	74.566	Maintenance and lighting of antenna structures.		
	74.581	Entries and keeping of logs and records.		
	74.582	Rules pursuant to station identification.		
Broadcast Bureau	Part 74, Subpart F	Television Auxiliary Broadcast Stations	These rules define the kinds of stations which are authorized in this service and specify the frequencies on which they can operate in the prescribed manner.	47 U.S.C. §§302(a), 303(a)-(c), 303(f), 303(g) and 303(r)
	74.602	Specifies the frequencies available for assignment to TV pickup, STL intercity relay and translator relay stations.	" "	" "

Reviewing Bureau/ Office	47 C.F.R.	Title/Description	Need	Legal Basis
Broadcast Bureau	74.603	Prescribes uses which may be made of the sound channel in TV auxiliary stations.	" "	" "
	74.604	Applicant's selection of a frequency to avoid interference to other stations.		
	74.631	The kinds of service that are permissible by TV pickup, STL, intercity relay and translator relay stations.		
	74.632	The licensing requirements for these auxiliary stations.		
	74.633	Provisions for temporary authorizations in these services.		
	74.634	Requirements concerning remote control operation of these stations.		
	74.635	Provisions as to unattended operation of these stations.		
	74.651	Procedures for authority to change equipment.		
	74.664	Requirements concerning the posting of the station and operator licenses.		
	74.665	Requirements as to operators which must be on duty at the various kinds of stations.		

Reviewing Bureau/ Office	47 C.F.R.	Title/Description	Need	Legal Basis
Broadcast Bureau	74.681	Logs to be kept and the entries to be made.	" "	" "
	74.682	Identification of the station by visual and oral call signs and the frequency thereof.		
Broadcast Bureau	Part 74, Subpart H	Low Power Auxiliary Stations	These rules prescribe the kinds of low power auxiliary stations which can be authorized and the frequencies on which they can operate.	47 U.S.C. §§302(a), 303(a)-(c) 303(f), 303(g) and 303(r)
	74.802	Frequencies on which these stations may operate and how the selection of frequency may be made.	" "	" "
	74.832	The licensing requirements for these stations.		
	74.833	Provisions for temporary authorizations in this service.		
	74.861	Technical requirements for operation in this service.		
	74.868	Requirements as to operators which must be on duty at these stations.		
	74.881	Logs and records which are required to be kept.		

Reviewing Bureau/ Office	47 C.F.R.	Title/Description	Need	Legal Basis
Cable Bureau	Part 76, Subpart D	Mandatory Cable Television Carriage of Local Television Broadcast Signals.	This subpart of the rules requires that cable television systems carry and distribute to their subscribers the signals of local television broadcast stations. The rules were intended to assure that cable systems operated as a supplement and not a replacement for over-the-air broadcast service, to assure against unreasonable restrictions on the ability of local stations to compete, and to assure that subscribers have access to local signals and that stations are not denied access to the audience they are licensed to serve.	47 U.S.C. §§152, 153, 154(i), 154 (1), 301, 303, 307, 308, 309
	76.51	Major television markets.	" "	" "
	76.53	Reference points.		
	76.54	Significantly viewed signals; method to be followed for special showings.		
	76.55	Manner of Carriage.		
	76.57	Provisions for systems operating in communities outside of all major and smaller television markets.		

Reviewing Bureau/ Office	47 C.F.R.	Title/Description	Need	Legal Basis
Cable Bureau	76.59	Provisions for smaller television markets.	" "	" "
	76.61	Provisions for the major television markets.		
	76.63	Provisions for second 50 major television markets.		
	76.65	Determination of signal contours.		
		* * * *		
Cable Bureau	76.31	Cable television franchises fee limits	This rule prohibits state and local governments from charging cable television franchise fees which exceed 3% of a system's gross revenues (a fee of up to 5% may be charged with specific Commission approval). It was intended to place reasonable limits on local franchise fees so that such fees would not interfere with the effectuation of federal regulatory goals.	47 U.S.C. §152, 153, 154(i), 154 (j), 301, 303, 307, 308, 309. *See* *U.S. v. Southwestern Cable*, 392 U.S. 157 (1968).

Reviewing Bureau/ Office	47 C.F.R.	Title/Description	Need	Legal Basis
Cable Bureau	76.501	Network and local television station cross-ownership rules.	This rule prohibits cross-ownership between cable television systems and the national television networks and between cable systems and television and television translator stations serving the same area. It was intended to promote economic competition and diversity of television programming, ownership and control.	47 U.S.C. §§152, 153, 154(i), 154 (j), 301, 303, 307, 308, 309.
	76.610	Technical standards -- radiation limits.	This rule relates to radiation from cable television systems in certain frequency bands that are used by aeronautical and certain other safety-of-life radio services. It is designed to assure that cable systems do not radiate and interfere with over-the-air radio services.	47 U.S.C. §§151, 152, 302, 303, 307, 308, 309

Reviewing Bureau/ Office	47 C.F.R.	Title/Description	Need	Legal Basis
Private Radio Bureau		Stations On Shipboard In The Maritime Services	These rules establish operating guidelines, technical standards, and other uniform procedural and substantive requirements to foster proper and efficient operation of stations on shipboard in the maritime services.	47 U.S.C. §§154(i) and 303(r)
	83.24	Eligibility for station license.	" "	" "
	83.26	Administrative classification of stations.		
	83.42	Changes during license term		
	83.102	Posting station license.		
	83.103	Location of station.		
	83.104	Operating controls.		
	83.105	Requiring channels for radiotelegraphy.		
	83.106	Required frequencies for radiotelephony.		
	83.107	Antenna requirements.		
	83.111	Transmitter measurements.		
	83.112	General requirements for receiving apparatus.		
	83.115	Retention of radio station logs.		
	83.275	Ship position reports.		

Reviewing Bureau/ Office	47 C.F.R.	Title/Description	Need		Legal Basis
	83.276	Free safety service.	"	"	" "
	83.277	Free service for national defense.			
		* * * *			
Private Radio Bureau		Private Land Mobile Radio Services	These rules are necessary to establish licensing requirements in the services specified, including standards for eligibility, frequencies available and any special obligations deemed necessary for efficient operation of the services in question.		47 U.S.C. §§154(i) and 303 (r).
	90.17	Local government radio service.			
	90.19	Police Radio Service.			
	90.21	Fire Radio Service.			

Reviewing Bureau/ Office	47 C.F.R.	Title/Description	Need	Legal Basis
Private Radio Bureau	90.23	Highway Maintenance Radio Service.	" "	" "
	90.25	Forestry - Conservation Radio Service.		
	90.35	Medical Services.		
	90.37	Rescue Organizations.		
	90.39	Veterinarians		
	90.41	Disaster Relief Organizations.		
	90.43	School Buses.		
	90.45	Beach Patrols.		
	90.47	Establishment in Isolated Areas.		
	90.49	Communications Standby Facilities.		
	90.51	Emergency Repair of Public Communications Facilities.		
	90.53	Frequencies Available.		
	90.55	Paging operations.		

Reviewing Bureau/ Office	47 C.F.R.	Title/Description	Need	Legal Basis
Private Radio Service		Amateur Radio Service	These rules establish operating guidelines, technical standards and other substantive requirement to foster efficient operations of stations in the amateur radio service.	47 U.S.C. §§154(i) and 303(r)
	97.69	Digital Transmissions.	" "	" "
	97.73	Purity of Emissions.		
	97.75	Use of External Radio Frequency (RF) Power Amplifiers.		
	97.76	Requirements For Type Acceptance of External Radio Frequency (RF) Power Amplifiers and External Radio Frequency Power Amplifier Kits.		
	97.77	Standards for Type Acceptance of External Radio Frequency (RF) Power Amplifiers and External Radio Frequency Power Amplifier Kit.		

Reviewing Bureau/ Office	47 C.F.R.	Title/Description	Need	Legal Basis
Private Radio Service	90.95	Automobile Emergency Radio Service.	" "	" "
	90.103	Radiolocation Service		
		* * * *		
Private Radio Service		Personal Radio Services (Subpart A)	These rules are necessary to establish uniform licensing and operating requirements to foster proper and efficient operations in the General Mobile Radio Service.	47 U.S.C. §§154(i) and 303(r)
	95.11	Eligibility For Station License.	" "	" "
	95.31	Types Of Operation Authorized		
	95.61	Permissible Communications.		
	95.65	Operation By, Or On Behalf Of, Persons Other Than The Licensee.		
	95.101	Prohibited Communications.		
	95.111	Transmitter Service and Maintenance.		
		* * * *		

Reviewing Bureau/ Office	47 C.F.R.	Title/Description	Need	Legal Basis
Private Radio Bureau	90.61	General Eligibility	" "	" "
	90.63	Power Radio Service.		
	90.65	Petroleum Radio Service.		
	90.67	Forest Products Radio Service.		
	90.69	Motion Picture Radio Service.		
	90.71	Relay Press Radio Service.		
Private Radio Bureau		Private Land Mobile Radio Services	" "	47 U.S.C. §§154(i) and 303(r)
	90.73	Special Industrial Radio Service.		
	90.75	Business Radio Service.		
	90.79	Manufacturers Radio Service.		
	90.81	Telephone Maintenance Radio Service.		
	90.87	General Eligibility		
	90.89	Motor Carrier Radio Service.		
	90.91	Railroad Radio Service.		
	90.93	Taxicab Radio Service.		

Before the
Federal Communications Commission
Washington, D. C. 20554

30374

In the Matter of Federal Communications Commission's List of Rules to be Reviewed Pursuant to Section 610 of the Regulatory Flexibility Act During 1981-1982	)	Gen. Docket No. 81-706

ERRATUM

Released: November 10, 1981

On October 21, 1981, the Commission adopted a Notice (FCC 81-487) in the above-entitled matter. The Notice was released on October 30, 1981. The October 30st Notice contains errors and the purpose of this Notice is to correct errors of omission, delete sections which were erroneously printed out of sequence and correct several other errors. Corrections are as follows:

(1) Delete Subpart 17, Sections 17.1 through 17.23 as published in the original Notice after Section 2.1035 and before Section 15.335;

(2) Add after Part 2, Subpart J, Section 2.1035, the Part 2 rule sections specified at Attachment 1;

(3) Add before Section 15.335 the Part 15 rule sections specified at Attachment 1;

(4) Delete Part 97, Sections 97.69, 97.73, 97.75, 97.76, 97.77 as published in the original Notice after Section 90.55;

(5) Add after Section 90.55 the Part 90, 95 and 97 rule sections specified at Attachment 1;

(6) Section 2.1035 under Title/Description change or to of;

(7) Part 31 under Need change USDA to USOA.

FEDERAL COMMUNICATIONS COMMISSION

William J. Tricarico
Secretary

Attachment 1

Reviewing Bureau/ Office	47 C.F.R.	Title/Description	Need	Legal Basis
Office of Science and Technology	2.1037	Application for prototype certification of ISM equipment.	" "	" "
	2.1039	On-site certification of ISM equipment.		
	2.1041	Measurement procedure.		
	2.1043	Changes in certificated equipment.		
	2.1045	Identification label for certification equipment.		
	2.1061	Submission of technical information for application reference.		
	2.1063	Disclaimer re technical information filed for application reference.		
	2.1065	Identification and changes in equipment information filed for application reference.		
		* * * *		
Office of Science and Technology	Part 15, Subpart G	Auditory Training Devices	This subpart governs low power communications devices designed to be used in institutional training programs to teach the deaf. The rules define who may use auditory training devices, the frequencies that they may operate on, the type of equipment authorization required and the technical standards to be met.	47 U.S.C. §§302, 303(g), and 303(r)
	15.331	Scope of this subpart.		
	15.333	Operation in the band 72-6 MHz.		

eviewing Bureau/ Office	47 C.F.R.	Title/Description	Need	Legal Basis
rivate Radio Bureau	90.61	General Eligibility	" "	" "
	90.63	Power Radio Service.		
	90.65	Petroleum Radio Service.		
	90.67	Forest Products Radio Service.		
	90.69	Motion Picture Radio Service.		
	90.71	Relay Press Radio Service.		
rivate Radio Bureau		Private Land Mobile Radio Services	" "	47 U.S.C. §§154(i) and 303(r)
	90.73	Special Industrial Radio Service.		
	90.75	Business Radio Service.		
	90.79	Manufacturers Radio Service.		
	90.81	Telephone Maintenance Radio Service.		
	90.87	General Eligibility		
	90.89	Motor Carrier Radio Service.		
	90.91	Railroad Radio Service.		
	90.93	Taxicab Radio Service.		

Reviewing Bureau/ Office	47 C.F.R.	Title/Description	Need	Legal Basis
Private Radio Service	90.95	Automobile Emergency Radio Service.	" "	" "
	90.103	Radiolocation Service		
		* * * *		
Private Radio Service		Personal Radio Services (Subpart A)	These rules are necessary to establish uniform licensing and operating requirements to foster proper and efficient operations in the General Mobile Radio Service.	47 U.S.C. §§154(i) and 303(r)
	95.11	Eligibility For Station License.	" "	" "
	,95.31	Types Of Operation Authorized		
	95.61	Permissible Communications.		
	95.65	Operation By, Or On Behalf Of, Persons Other Than The Licensee.		
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		* * * *		

Reviewing Bureau/ Office	47 C.F.R.	Title/Description	Need	Legal Basis
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	97.73	Purity of Emissions.		
	97.75	Use of External Radio Frequency (RF) Power Amplifiers.		
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	97.77	Standards for Type Acceptance of External Radio Frequency (RF) Power Amplifiers and External Radio Frequency Power Amplifier Kit.		

Agency: FEDERAL COMMUNICATIONS COMMISSION

Action: Publication of Semi-Annual Agenda

Summary: The Commission publishes a Semi-Annual Agenda to provide the public with adequate notice of significant proceedings under development or review, as prescribed in Executive Order 12291 (17 February 1981). This edition of the agenda, in compliance with the Regulatory Flexibility Act of 1980 (P.L. 96-354) includes notations on the applicability of the Regulatory Flexibility Act to each item. This fulfills the requirement that all agencies publish Regulatory Flexibility Agenda in April and October of each year.

Henceforth, the FCC's Semi-Annual and Regulatory Flexibility Agenda, in combined form, will be published in the Federal Register each April and October hereafter. This supersedes all previously-announced publication dates for the Semi-Annual Agenda.

Effective Date: October 31, 1981

Address: Federal Communications Commission, 1919 M Street N.W., Washington, D. C. 20554.

For further information contact: Anne Riffey, Office of the Managing Director, (202) 632-7513.

Supplementary Information:

Semi-Annual Agenda of Significant Proceedings

The Commission wants to encourage greater public participation in the FCC rule making process. To help keep the public informed of significant rule making proceedings, the Commission has prepared an agenda of important proceedings now in progress. The Commission expects to publish an agenda of significant proceedings in the Federal Register every six months.

The following terms may be helpful in understanding the status of the proceedings included in this report:

> A Docket Number is assigned to a proceeding if the Commission has issued either a Notice of Proposed Rule Making or a Notice of Inquiry in regard to the matter under consideration. Since January 1, 1978, the Commission has used docket numbers which consist of the last two digits of the calendar year in which the docket was established plus a sequential number which begins at 1 with the first docket initiated during a calendar year (e.g. Docket 78-1 or Docket 79-1). The abbreviation for the responsible Bureau usually precedes the docket number, as in "BC Docket 79-164." When a docket number consists of only five digits (e.g. Docket 29622), this indicates that the docket was established before January 1, 1978.
>
> Notice of Inquiry (NOI) - issued by the Commission when it is seeking information on a broad subject or trying to generate ideas on a given topic. A comment period is specified during which all interested parties may submit comments.
>
> Notice of Proposed Rule Making (NPRM) - issued by the Commission when it is proposing a specific change to the FCC Rules and Regulations. Before any changes are actually made, interested parties may submit written comments on the proposals.
>
> Memorandum Opinion and Order (MO&O) - issued by the Commission to deny a petition for rule making, conclude an inquiry, modify a decision, or deny a petition for reconsideration of a decision.
>
> Report and Order (R&O) - issued by the Commission to state a new or amended rule or state that the FCC Rules will not be changed.
>
> Rule Making (RM) Number - assigned to a proceeding after the appropriate Bureau/Office has reviewed a petition for rule making, but before the Commission has taken action on the petition.

BROADCAST

Rulemaking or Docket Number	Title of Proceeding, Contact Person	RFA	Description	Stage of Development	Projected Commission Action
20418	New VHF Channel Assignments; Roger Holberg, 632-7792	Yes___ No X	Study of possibility of assigning new VHF channels in the Top-100 markets, specifically at this time in Charleston, West Virginia, Johnstown or Altoona, Pennsylvania, Knoxville, Tennessee, and Salt Lake City, Utah.	1) R&O on Petitions for reconsideration being drafted; 2) R&O on Rule Making being drafted. (See also entry for BC 80-719, below.)	1) 2nd Quarter; 2) 3rd Quarter
21049	Commercial Television Network Practices; Israel Teitelbaum, 632-7792	Yes X No __	Inquiry into practices and policies of the 3 major television networks regarding the acquisition and distribution of television programming.	Network Inquiry Special Staff has made final report to Commission. B/cast Bureau is preparing staff summary & recommended actions concerning special staff report.	
21310	FM Quadraphonic Broadcasting; Greg DePriest, 632-9660	Yes___ No X	Inquiry into whether Commission should authorize a quadraphonic FM broadcasting system.	Notice of Proposed Rule Making (NPRM) adopted July 17, 1980. Reply comments closed on February 1981. R&O being drafted.	1st Quarter 1982

BROADCAST

Rulemaking or Docket Number	Title of Proceeding, Contact Person	RFA	Description	Stage of Development	Projected Commission Action
21313	AM Stereo; Gregory DePriest, 632-9660	Yes __ No X	The Commission must decide what, if any, standards should be established for the transmission of stereophonic program material by AM broadcast stations.	NPRM adopted Sept., 1978; a Memorandum Opinion and Order and Further NPRM adopted July 3C, 1980 and released Sept. 11, 1980. Reply comment period closed on March 23, 1981. R&O is being drafted.	1st Quarter 1932
21474	Equal Employment Opportunity in the Broadcast Industry; Steve Bookshester, 632-7792	Yes __ No X	Revision of FCC Form 395, the annual employment form filed by broadcasters, to make it more useful in monitoring the broadcasters' commitment to equal employment opportunity.	Additional NPRM to explore modifications of EEO rules being drafted.	2nd Quarter 1982
21502	Subscription (Pay) TV Operations; Freda Thyden, 632-7792	Yes X No __	Inquiry to determine whether current rules governing pay TV operation are necessary or desirable.	A further NPRM proposing further deregulation of STV service adopted Sept. 30, 1981. Report and Order to be drafted.	3rd Quarter

BROADCAST

Rulemaking or Docket Number	Title of Proceeding, Contact Person	RFA	Description	Stage of Development	Projected Commission Action
BC 78-239	Voting Trusts; Steve Bookshester 632-7792	Yes ___ No X	Inquiry to determine what types of ownership interests are cognizable for purposes of the FCC's ownership rules.	NOI/NPRM adopted July, 1978; comment period closed Dec., 1978.	
BC 78-253	Inquiry into the Proper Role of Television Translators and Low-Power TV Broadcasting; Molly Pauker 632-7792	Yes X No ___	Inquiry into uses of television translators, especially in rural areas, to determine if rules concerning translators should be changed to permit program origination and/or subscription service.	Report and Order being drafted.	1st Quarter
BC 79-164	Reduction of AM Bandwidth to 9 kHz; Larry Olson, 254-3394	Yes ___ No X	Inquiry into reduction of spacing between AM channels from 10 kHz to 9 kHz.	Final resolution is awaiting results of Region 2 Conference on AM Broadcasting, to be held in November, 1981.	2nd Quarter
BC 79-269	New Jersey UHF-TV Assignments; Gordon Godfrey, 632-9660	Yes ___ No X	Study to assign 6 UHF-TV frequencies to various New Jersey communities.	NPRM adopted 10/18/79. Record closed 8/80. R&O being developed.	3rd Quarter

BROADCAST

Rulemaking or Docket Number	Title of Proceeding, Contact Person	RFA	Description	Stage of Development	Projected Commission Action
BC 79-270	New Jersey UHF-TV Financial Viability; Martin Blumenthal, 632-7792	Yes ___ No X	Study of means by which the New Jersey UHF-TV stations created in BC Docket 79-269 (above) might best become financially viable.	NPRM adopted 10/18/79 in conjunction with BC Docket 79-269; record closed 8/80.	Final action projected for same time as BC Docket 79-269, above.
BC 80-90	Use of FM Frequencies; Kathryn Hosford, 632-9660	Yes ___ No X	Study of means for increasing the use of FM frequencies.	NPRM issued on Feb. 28, 1980; reply comments closed on Mar. 2, 1981. R&O being drafted.	3rd Quarter FY 82
BC 80-130	Processing of FM Rule Making Petitions; Mark Lipp, 632-7792	Yes ___ No X	Study of possible modifications to the procedures for processing FM petitions.	R&O being drafted in conjunction w/BC 80-90 (see above).	----------
BC 80-190	Reduction of Financial Reporting Requirements; Brian Fontes, 632-7792	Yes X No ___	Proposal to eliminate or substantially reduce amount of financial data to be reported to the Commission.	Further NPRM adopted Sept. 30, 1981, comments and reply comments due by Dec. 14, 1981.	2nd Quarter FY 82
BC 80-719	Reassignment of VHF-TV Frequency to New Jersey; Mark Lipp, 632-7792	Yes ___ No X	Study of possibility of reassigning the Channel 9 VHF-TV frequency from New York City to a New Jersey community.	NPRM adopted 11/6/80. Matter being held in abeyance pending resolution of RKO appeal by Federal court. Oral argument held Oct. 1981.	-----------

BROADCAST

Rulemaking or Docket Number	Title of Proceeding, Contact Person	RFA	Description	Stage of Development	Projected Commission Action
81-741	Teletext Authorization; Alan Stillwell, 632-6302	Yes X No ___	Proposal to set non-interference, non-degradation of main signal quality parameters for teletext transmission by broadcasters.	NPRM adopted October 22, 1981. Comments and reply comments due 90 days after issuance.	3rd Quarter FY 82
81-496	Elimination of Some Requirements for Public Broadcasters; John Kamp, 632-6302	Yes X No ___	Proposal to eliminate or modify rules pertaining to programming, ascertainment and program logs for public broadcasters.	NPRM adopted July 30, 1981. Comments and reply comments due by Dec. 16, 1981.	3rd Quarter FY 82

CABLE TV

Rulemaking or Docket Number	Title of Proceeding, Contact Person	RFA	Description	Stage of Development	Projected Commission Action
18891 and 20423	Cable TV Systems: Multiple Ownership and Cross-Ownership; William Johnson, 632-6468	Yes ___ No X	Inquiry to determine if FCC should limit size of cable systems, multiple ownership and cross-ownership.	Additional R&Os are forthcoming in these dockets. Office of Plans and Policy has a study of these issues in progress. Study includes telephone cross-ownership issues also.	Nov. 1981
21002	Cable TV Local Franchise Fees; Judith Friedman, 632-6468	Yes ___ No X	Proposal to eliminate rule (§76.31) that limits the ability of local authorities to collect franchise fees in excess of 3% of a cable system's gross revenues.	Draft of final R&O is in progress. Additional analysis of economic study (NERA study) submitted in comments may be required.	1st Quarter 1982

COMMON CARRIER

Rulemaking or Docket Number	Title of Proceeding, Contact Person	RFA	Description	Stage of Development	Projected Commission Action
CC 78-72	MTS-WATS Market Structure Inquiry; Carl Lawson, 632-9342	Yes ___ No X	Inquiry to determine whether public interest requires interstate Message Telecommunications Service (long distance telephone service) and/or Wide Area Telecommunications Service (bulk rate long distance service) or their functional equivalents, to be provided on a sole source basis.	Report and third supplemental notice issued August 19, 1980. Staff preparing further orders on Alaska entry policy and access policy.	March 1982

COMMON CARRIER

Rulemaking or Docket Number	Title of Proceeding, Contact Person	RFA	Description	Stage of Development	Projected Commission Action
CC 78-196	Uniform System of Accounts for Telephone Companies; Steve Duffy 634-1861	Yes ___ No X	Rulemaking to develop a system of accounts which can readily provide cost information by both jurisdiction and individual service categories.	2nd supplementary notice of proposed rulemaking & order adopted Oct. 7, 1981.	Dec. 1981
CC 79-35	INMARSAT Interconnection - Implementation of Sec. 503(G) of INMARSAT Act ; Jim Ball, 632-3214	Yes ___ No X	Rule making regarding operational arrangements for maritime satellite service, interconnection with earth stations, and regulating safeguards against cross-subsidization of costs.	Staff working on two major issues - earth station ownership and COMSAT/INMARSAT losses.	Jan./Feb. 1982
CC 79-105	Deregulation of Inside Wiring ; Donald Burrell 634-1861	Yes X No ___	Inquiry into the complete deregulation of the business of furnishing inside telephone wiring.	Further Notice of Inquiry adopted May 18, 1981. Staff preparing Report & Order.	Dec. 1981
CC 79-187	AT&T Earnings on Interstate & Foreign Services in 1978 ; Cladia Pabo 632-9342	Yes ___ No X	Inquiry to determine if AT&T's rate of return during 1978 exceeded the limits specified by the Commission in Docket 20376.	Draft Order in preparation.	Dec. 1981

COMMON CARRIER (Cont'd.)

Rulemaking or Docket Number	Title of Proceeding, Contact Person	RFA	Description	Stage of Development	Projected Commission Action
CC 79-246	AT&T Rate Structure Rule Making; Leonard Kennedy, 632-6917	Yes___ No _X_	Inquiry into AT&T private line tariff and rate structures and volume discount policies.	Staff preparing a First Report and Order and Further NPRM.	Jan. 1982.
CC 79-318	Cellular Mobile Communications; Thomas Gutierrez, 632-6450	Yes___ No _X_	Inquiry into implementation of cellular mobile communications systems.	Report and Order adopted April 9, 1981. Petitions for reconsideration pending.	Report & Order scheduled for Dec. 1981
CC 80-170	Authorized User; Gene Belardi, 632-7265	Yes___ No _X_	NPRM on whether to authorize non-carrier entities to obtain service directly from Comsat for provision of international communications.	Report and Order in preparation.	Dec. 1981.
CC 80-632	Overseas Communication Service; Stuart Chiron, 632-7265	Yes___ No _X_	The Commission has tentatively concluded that voice/record dichotomy in international services no longer best serves the public interest. This NPRM proposes to permit the IRC's to provide international voice services and AT&T to provide international record services.	Notice of Proposed Rule Making adopted October 9, 1980.	Dec. 1981.

COMMON CARRIER (Cont'd.)

Rulemaking or Docket Number	Title of Proceeding, Contact Person	RFA	Description	Stage of Development	Projected Commission Action
CC 80-634	Communications Satellite Corporation Structure; Jim Ball, 632-3214	Yes X No ___	An inquiry into changes in the corporate structure and operations of Communications Satellite Corporation.	NPRM adopted October 9, 1980. Staff preparing recommended decision.	Dec. 1981.
CC 81-412	AT&T 1981 General Rate Increase; Kent Nakamura, 632-6917	Yes ___ No X	AT&T tariff filings (TR. NO. 17303-13708) for a general rate increase.	Tariffs suspended and set for investigation. Staff is now reviewing support data.	Jan. 1982.

OFFICE OF PLANS AND POLICY

Rulemaking or Docket Number	Title of Proceeding, Contact Person	RFA	Description	Stage of Development	Projected Commission Action
80-603	Direct Broadcast Satellites; Florence Setzer 653-5940	Yes X No ___	Proposed policies for regulation of direct broadcast satellites	NOI issued in Oct. 1980. NPRM issued in June 1981. 14 applications received; 9 accepted for filing.	1st quarter, 1982.
- - - -	FCC Policies on Cable Ownership; Kenneth Gordon 653-5940	Yes X No ___	NOI and NPRM to be issued, and accompany the staff's report on cable ownership policies. Small TV broadcast stations and cable systems will have their range of entrepreneurial options widened.	Ready to be presented to the Commission.	1st quarter, 1982

OFFICE OF PLANS AND POLICY

Rulemaking or Docket Number	Title of Proceeding, Contact Person	RFA	Description	Stage of Development	Projected Commission Action
-------	NPRM to Use a System of Random Selection (Lottery) to Choose Licensees From Among Certain Mutually Exclusive Applicants; Randy Thomas, 653-5940	Yes X No ___	This rulemaking seeks to implement the permissive authority contained in new 47 U.S.C. §309(i)(1) of the Communications Act to use a random selection system (lotteries) to select initial telecommunications licensees.	Draft NPRM.	
OFFICE OF SCIENCE & TECHNOLOGY					
Not yet assigned	Spread Spectrum Communications Technology: Michael Kennedy, 632-7073	Yes ___ No X	Inquiry into possible civil applications of spread spectrum communications technology and possible rulemakings needed to permit its use (it is implicitly forbidden under present rules).	NOI was adopted June 4, 1981.	
RM-3524	Air to Ground Telephone Service at 900 MHz; Mel Murray, 653-8168	Yes ___ No X	This proposed system is designed to serve passengers on commercially scheduled airlines in the contiguous United States. Airfone, the petitioner, plans to use single side band modulation, proposes the use of a total of 4 MHz of spectrum to provide 310 two-way voice channels which will be interconnected to the public telephone network.	The feasibility of the technical approach proposed by Airfone is presently being evaluated by Commission staff. Airfone is conducting hardware and operational testing under a Part 5 developmental license. Upon completion of testing and evaluation, a decision will be made as to whether or not to proceed with rulemaking.	

OFFICE OF SCIENCE & TECHNOLOGY

Rulemaking or Docket Number	Title of Proceeding, Contact Person	RFA	Description	Stage of Development	Projected Commission Action
RM-3747	Utilities Telecommunications Council Power Line Carrier Petition; Sam Tropea, 653-8164	Yes No X	The Petitioner seeks improved regulatory recognition and protection for electric utility powerline carrier systems in the 10-490 kHz band.	Reply comments period closed 4 February 1981, and comments are presently being evaluated. An NPRM is planned for completion during 4th Quarter CY 1981.	
20990	Remote Control and Security Devices; George Harenberg, 653-8130	Yes X No	Amendment of Part 15 of the Rules to provide for the operation of low power communications devices used in remote control and security applications.	A First Report & Order was adopted by the Commission on October 22, 1981.	
21371	Description of Test Measurement Facilities; Syd Bradfield, 653-8131	Yes X No	Amendment of Part 2 of the Rules establishing criterion to determine the suitability of a test site for making measurements to determine compliance of equipment subject to the Commission's authorization program.	A First Report & Order has been drafted and is being circulated.	
Gen. Docket 78-369	Radio Frequency Interference to Electronic Equipment; Al Paul, 653-8126	Yes No X	Inquiry to determine extent of radio frequency interference to electronic equipment and need for government regulation to lessen such interference.	Further NOI has been issued. Comments have been extended until November 30, 1981.	

OFFICE OF SCIENCE & TECHNOLOGY

Rulemaking or Docket Number	Title of Proceeding. Contact Person	RFA	Description	Stage of Development	Projected Commission Action
Gen. Docket 79-188	Xerox XTEN Proposal; Bert Withers, 653-8100 Kevin Kelley, 632-6430	Yes X No	Xerox Corporation has proposed the allocation of microwave frequencies in the 10.55-10.68 GHz band for use in providing a new common carrier electronic message service.	First Report and Order adopted 14 January 1981, with release expected April 1981. Further Notice of Proposed Rulemaking was adopted August 4, 1981. Comments are due Novmeber 2, 1981. Reply Comments are due December 2, 1981.	
Gen. Docket 80-184	Mobile Services Conference; Lawrence Palmer, 653-8102	Yes No X	Preparations of U.S. proposals to a 1982 ITU World Conference on the Mobile Radio Services.	Fourth NOI expected to be on Commission Agenda in November 1981.	
Gen. Docket 80-398	Broadcasting-Satellite Planning Conference; Edward Jacobs, 653-8102	Yes No X	Preparation of U.S. proposals to a 1983 ITU Region 2 Conference to plan the use of 12 GHz broadcasting-satellites in the Western Hemisphere.	Memorandum Opinion & Order was issued February, 1981 establishing an Advisory Committee. Comments and reply comments to 2nd NOI have been reviewed. Third NOI expected during first quarter 1982.	
Gen. Docket 80-739	WARC-79 Implementation; Fred Thomas, 653-8171	Yes No X	The requirements of the Final Acts of WARC-79 necessitate an overhaul of Section 2.106 - Table of Frequency Allocations. The changes proposed make use of a draft table developed within IRAC Ad Hoc 172.	Comments on the 3rd NOI have been received and summarized. Fourth NOI was adopted on October 1, 1981, and released on October 16, 1981.	

OFFICE OF SCIENCE & TECHNOLOGY

Rulemaking or Docket Number	Title of proceeding, Contact Person	RFA	Description	Stage of Development	Projected Commission Action
Gen. Docket 80-741	Space Services Planning Conference (Space WARC); Thomas S. Tycz, 653-8102	Yes No X	Preparations of U. S. proposals to a 1984/1985 (2nd session) ITU WARC on the Use of the Geostationary-Satellite Orbit and the Planning of the Space Services Utilizing It.	Memorandum Opinion & Order establishing a Public Advisory Committee has been issued. A second NOI will be complete in fourth quarter CY 1981.	
PRIVATE RADIO BUREAU					
18921	Multiple License Sharing of Private Land Mobile Radio Facilities on the Frequencies below 800 MHz; John Borkowski 632-7597	Yes X No	The development of rules and policies to better define and govern the multiple licensing and sharing of private land mobile radio facilities operating below 800 MHz.	Tentative Decision and Further Notice of Proposed Rule Making adopted June 4, 1981.	April, 1982
20846	Telephone Interconnection in Land Mobile Radio Services; Lewis Goldman 632-6497	Yes No X	Proceeding to develop and prescribe specific rules for interconnection of private land mobile radio systems with the public switched telephone network.	A Report and Order is being prepared by the staff.	April, 1982
79-140	Additional Personal Radio Service; Joe Johnson, 632-7597	Yes No X	Inquiry into need for new Personal Radio Service at 900 MHz, and technical and operational characteristics of such a possible service.	Staff will be drafting document proposing the termination of the proceeding.	April, 1982

PRIVATE RADIO BUREAU

Rulemaking or Docket Number	Title of Proceeding, Contact Person	RFA	Description	Stage of Development	Projected Commission Action
79-191	Release, Allocation and Criteria for Use of the 250 Remaining Channels in the 800 MHz band; Eugene Thomson/ Lewis Goldman, 632-6497	Yes X No ___	Proceeding to develop rules to make the 250 reserve channels that remain in the 806-821/851-866 MHz bands available for use by private land mobile radio.	Further NPRM adopted June 16, 1981. Comments due October 30, 1981; reply comments due November 30, 1981.	July, 1982

Mr. **Ireland**. We are adjourned. This summer we will probably hear from the IRS and the DOD, as well as other agencies.

[Whereupon, at 11:40 a.m., the subcommittee adjourned, to reconvene subject to the call of the Chair.]

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